

TASK FORCE ON LEGAL AID
IN THE NORTHWEST
TERRITORIES

Report to the Legal Services Board

November 1991



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NORTHWEST TERRITORIES LEGAL AID TASK FORCE REPORT

1. Introduction

This is the report of a five member task force appointed by the Legal Services Board of the Northwest Territories at its June 1990 meeting to investigate, examine and report on the legal aid system in the Northwest Territories and to make recommendations as to how it can be improved. The Task Force members are drawn from the various regions and interest groups served by the legal aid program. They are the following:

1. Adrian C. Wright, private lawyer, Yellowknife -- Chairperson;
2. Nora M. Sanders, Director of Policy and Planning, Government of the Northwest Territories, Department of Justice, Yellowknife;
3. Neil A. Sharkey, Executive Director, Maliganik Tukisiniakvik, Iqaluit (member of the Legal Services Board);
4. Thomas Kutluk, courtworker and formerly chairperson of Keewatin Legal Services Society Board, Arviat (member of the Legal Services Board);
5. Helen Hudson-MacDonald, courtworker, MacKenzie Court Workers Services, Fort Smith.

The Task Force met on many separate occasions (as described in Schedule "A") and spoke with the individuals and groups listed in Schedule "B". It also received the written submissions that are attached in Schedule "C". Additionally, members of the Task Force visited Iqaluit, Inuvik and Rae in order to interview other interested groups and individuals.

In preparing this report, the Task Force has reviewed legislation from other Canadian jurisdictions. It has also examined studies of provincial or territorial legal aid plans. Finally, the reports listed in the Bibliography were reviewed.

2. Methodology

The Task Force has conducted a review of legal aid in the Northwest Territories which has covered the following issues:

- What is the purpose of legal aid?
- Who is legal aid intended to serve?
- How can this service be best provided?
- How can administrative procedures be simplified and streamlined to leave maximum resources available for service delivery?
- How can costs be controlled?
- What should be the roles of the Legal Services Board and the regional boards?
- What future directions should be taken by the Legal Services Board?

Each of the members of the Task Force came to this work with knowledge and experience about different aspects of legal aid services and administration. The Task Force started its work by reviewing reports and evaluations on legal aid plans elsewhere in Canada, and by discussing the structure and administration of the legal aid system in the Northwest Territories.

The Task Force has drawn on its collective experience to make practical observations and recommendations about the delivery of legal aid in the Northwest Territories. The Task Force was not, however, able to do thorough analysis of legal aid statistics and their correlation to financial data. The statistical and financial information necessary for such analysis were either entirely unavailable or accessible only after research that was beyond the capacity of the resources available to the Task Force.

In order to add to the information available to Task Force members, interviews were conducted in person and by telephone, with participants in the legal aid system and members of the public in Iqaluit, Pangnirtung, Yellowknife, Rae-Edzo, Tuktoyaktuk, Inuvik, Rankin Inlet, Fort Simpson, Fort Franklin, Hay River, Coppermine, Cambridge Bay, Spence Bay and Pond Inlet.

These interviews gave Task Force members important insights into regional and community concerns. Discussion often ranged beyond strictly "legal aid" issues. This

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was helpful both as a reminder that Legal Aid is one of the most visible components of the justice system, and to put the issues surrounding legal aid into a broader context.

For the purposes of comparison, Task Force members also met with the Executive Director of the Ontario Legal Aid Plan, and the Director of the Nishnawbe-Aski Legal Services Corporation in northern Ontario, to learn more about the provision of legal aid services in the remote areas of that province.

This report deals with the role of legal aid within the justice system as it is currently structured. There may be significant changes in the justice system as a whole over the next ten years. The nature of these changes will determine the adjustments which the legal aid system will need to make. It was beyond the capacity of this Task Force to foresee the justice system of the future and the place of legal aid within it.

3. Background

(a) Origins

The Northwest Territories legal aid program started in August 1971 when the Governments of the Northwest Territories and Canada signed an agreement for the cost-sharing of legal aid. The agreement established a three-member committee which administered the program. Legal aid services were delivered by a panel of members of the private bar who were assigned by the Committee to handle criminal or civil matters involving individuals who were eligible for legal aid. The Committee assigned resident lawyers to act for such clients in all matters except for the most serious criminal offences. In those cases legally-aided clients were entitled to select their counsel from a panel of resident lawyers who acted in legal aid matters or from the similar panel of non-resident members of the Northwest Territories bar.

Individuals were entitled to legal aid to assist them in defending all indictable offences and those summary conviction offences in which the accused was subject to a sentence of imprisonment or to a penalty that would interfere substantially with his livelihood. Individuals charged with Juvenile Delinquents Act offences were also eligible for legal aid.

Legal aid was available for most civil matters except for certain areas that were specifically excluded. Although legal aid has always been available for civil cases, it has in practice been almost exclusively used to defend individuals charged with criminal offences.

An individual was eligible for legal aid if the Committee was of the opinion that he or she would not be able to afford to retain his own lawyer without depriving himself or his dependants of reasonable necessities or without sacrificing modest capital assets. Under the original agreement, the cost of the legal aid plan was shared equally by the Federal and Territorial Governments.

(b) The First Regional Clinic -- Maliganik Tukisiniakvik

Maliganik Tukisiniakvik was established in Frobisher Bay on 1 April 1975 as a legal services centre to serve the Baffin Region. It was funded jointly and directly by the Government of the Northwest Territories and the Federal Department of Justice. It was designed to supplement the legal aid plan. When Maliganik Tukisiniakvik began, its lawyers were not allowed to act in civil cases or as criminal defence counsel but were to supervise and train courtworkers and to perform public legal education.

When it was established, Maliganik Tukisiniakvik employed a lawyer as an executive director, two full-time Inuit "paralegals" and a secretary/translator. Maliganik Tukisiniakvik has always been governed by a board of directors which has, since its second year of operations, been elected from the people of Frobisher Bay/Iqaluit at an annual general meeting.

(c) Northwest Territories Native Courtworkers Association -
MacKenzie Court Workers Services

A courtworker program commenced in 1975 with the incorporation of the Northwest Territories Native Courtworker Association (now known as MacKenzie Court Workers Services). This program was (and continues to be) funded by a cost-sharing agreement between the Governments of the Northwest Territories and Canada. This is a separate agreement from the legal aid cost-sharing agreement. The courtworker agreement has always precluded employees of this program from assisting clients in civil matters such as name changes, custom adoptions or maintenance variation. Accordingly, the cost of any such work is borne entirely by the Government of the Northwest Territories and is not shared with the Government of Canada.

The program was, and continues to be, governed by a board of directors drawn from the area of the Northwest Territories it serves. Under the original agreement, courtworkers were to be responsible for the following services:

- a. Assisting native people in the Northwest Territories in having a greater understanding of their rights and obligations in the justice system;
- b. Assisting in the dissemination of information regarding the Northwest Territories legal aid program;
- c. Providing native people with counselling and referral to drug and alcohol treatment and rehabilitation;
- d. Assisting the appropriate government authorities who offer parole supervision and counselling services to offenders;
- e. Promoting and assisting in programs designed to prevent and diminish crime within the communities;
- f. Assisting incarcerated natives with post-release programs.

The use of the term courtworker is dealt with in the section entitled "Courtworkers".

(d) Cowie Task Force

In 1975, a review of the Northwest Territories legal aid program was initiated by the Commissioner of the Northwest Territories and the Federal Minister of Justice. The four-person task force headed by Ian B. Cowie reported to the Minister of Justice and the Commissioner on the 22nd of June 1977.

The Cowie Task Force made the following recommendations as to how legal aid should be delivered in the various regions of the Northwest Territories:

- a. In the Baffin Region, Maliganik Tukisiniakvik should be funded as a part of the main legal aid program and responsible for the delivery of legal services in the Baffin Region. The Legal Services Board should also enter into a contract with a private lawyer to relocate to Iqaluit and handle most of the legal aid work in that region. Inuit legal aid representatives should be designated for most Baffin Island communities and the flying-in of private lawyers on court circuits should be eliminated except in unusual cases.
- b. In the Keewatin Region, a formal regional legal services committee should be formed and a full-time paralegal hired to be located in either Rankin Inlet or Baker Lake. Inuit legal aid representatives should be hired for the other settlements but the fly-in nature of providing legal aid services should be retained.
- c. In the Central Arctic or Kitikmeot Region, similar recommendations to those for the Keewatin were made except that the paralegal should be located in Cambridge Bay.
- d. In the MacKenzie Delta Region, a legal services centre should be established in either Inuvik or Aklavik to be staffed by a full-time lawyer and four paralegals to be located in the various settlements. The centre should be under the control of a board of directors drawn from the settlements in the region. Like the Baffin, the Legal Services Board should enter into a contract with a lawyer in Inuvik for the provision of legal aid services and the flying-in of private lawyers to perform legal aid services should be retained only in exceptional cases.
- e. In the MacKenzie Valley/Great Slave Region, the flying-in of private lawyers to perform legal aid services should be retained for all legal aid matters and Northwest Territories Native Courtworkers should provide courtworker services. The Legal Services Board should enter into a contract with a private practitioner or law firm in Hay River to provide legal aid services in the South Slave region.

(e) Present Structure

As a result of the Cowie Task Force's recommendations, the Legal Services Act was passed by the Legislative Assembly. This Act established the Legal Services Board to operate independently of government and to administer the legal aid program. Its members represent the Governments of Canada and the Northwest Territories, the private bar, regional legal services committees and the public.

Since the passage of the Legal Services Act, legal aid clinics have been established in Tuktoyaktuk (to serve the "Arctic Rim" communities of Tuktoyaktuk, Paulatuk, Sachs Harbour and Holman) in 1987 and in Rankin Inlet (to serve the Keewatin communities of Rankin Inlet, Baker Lake, Coral Harbour, Chesterfield Inlet, Repulse Bay, Arviat and Whale Cove) in 1990. A second lawyer has been employed by Maliganik Tukisiniakvik in Pond Inlet since 1988 to serve the North Baffin communities of Pond Inlet, Clyde River, Igloolik, Hall Beach, Arctic Bay, Nanisivik, Resolute Bay and Grise Fiord. The clinics have all attempted (and from time to time have succeeded) in hiring aboriginal settlement representatives to serve the needs of the various communities in their regions.

The federal\territorial cost-sharing agreement through which the regional clinics are funded allows their settlement representatives to assist clients in civil and summary conviction matters. As has been discussed above, at p. 5, this is not true of the similar agreement to share the cost of funding MacKenzie Court Workers Services.

The Legal Services Board is presently planning a legal services centre for the Kitikmeot region to be based in Cambridge Bay. This will consist of a lawyer who will act as executive director and courtworkers in the communities. There are presently courtworkers employed in Cambridge Bay, Coppermine, Spence Bay and Gjoa Haven.

MacKenzie Court Workers Services provides courtworker services for the MacKenzie Valley and Great Slave communities. It does not provide services in the communities served by the Arctic Rim and Keewatin law centres or in the Kitikmeot communities (as it did previously).

At the time of the Cowie Report, there was one resident judge of the Supreme Court of the Northwest Territories. There are now three, all of whom reside in Yellowknife.

The Territorial Court of the Northwest Territories has five resident judges, three of whom operate out of Yellowknife, one out of Inuvik and one out of Iqaluit. The judges in Yellowknife serve the Sahtu, Kitikmeot, Keewatin and South Slave regions; the judge in Inuvik serves the MacKenzie Delta and Sahtu; and the judge in Iqaluit serves the Baffin region.

Presently, the defence counsel used on all Territorial Court circuits in the Kitikmeot, Sahtu and North Slave communities come from the Yellowknife private bar. Private lawyers from Hay River act as defence counsel on all circuits originating from Hay River except for Fort Smith where there is a resident lawyer. Inuvik counsel are used on circuits to Aklavik, Fort McPherson, Arctic Red River and Inuvik. Defence counsel for court circuits in the areas served by the Arctic Rim and Keewatin Law Centres are the executive directors of those clinics (except when those individuals are, for some reason, absent in which case Inuvik and Yellowknife members of the private bar respectively are used). The executive director of Maliganik Tukisiniakvik and Pond Inlet lawyer perform most of the defence work on court circuits in the Baffin , although this work is supplemented by Yellowknife counsel.

4. Management and Organization

(a) Board Structure

The membership, duties and objectives of the Legal Services Board are set out in sections 3 to 14 of the Legal Services Act.

The Legal Services Act does not limit the size of the Legal Services Board. Sections 3(2) and (3) of the Act require that members of the Legal Services Board are to be appointed by the Minister of Justice as follows:

- (a) one member nominated by the federal Minister of Justice;
- (b) one member from the public service of the Northwest Territories;
- (c) one member nominated by the Law Society of the Northwest Territories;
- (d) one member nominated by each regional committee. The Act allows the Legal Services Board to recognize a society as the regional committee for each "region". Five regions have been defined for this purpose by the Legal Services Regulations and are the Baffin, Keewatin, Kitikmeot, MacKenzie Delta and the MacKenzie Valley/Great Slave regions.
- (e) one member who is neither a member of the Law Society nor the public service;
- (f) the Executive Director.

The regions now represented on the Legal Services Board have not always had representatives. The Kitikmeot region, for example, was only intermittently represented before the Kitikmeot Regional Council became the regional legal services committee for that region in about 1990.

Other communities have, at times, had two individuals on the Legal Services Board who could be seen as their representatives. There have at times been representatives for both the Arctic Rim Law Centre and the MacKenzie Delta area which includes Arctic Rim communities. The current wording of the Act has caused confusion about how the various regions should be represented. The Legal Services Board should be restructured so that all regions and interest groups are fairly represented.

The Legal Services Act does not presently disqualify employees of either the Legal Services Board or regional committees from sitting on the Legal Services Board. This is unlike, for example, the Territorial Health Insurance Act which prevents employees of

boards of management or their spouses from sitting on those boards. Hence, the executive directors of Maliganik Tukisiniakvik, MacKenzie Court Workers Services and Arctic Public Legal Education and Information Society (Arctic PLEI) are either presently, or have just been members of the Legal Services Board. Furthermore a courtworker employed by the Keewatin Legal Services Society is a member of the Legal Services Board (though at the time of his appointment he was chairperson of that society and not a courtworker).

This situation has resulted from the absence of a credible process for the selection of regional representatives. It is not clear whether those members of the Legal Services Board who have been appointed on the recommendation of the regional committees are delegates of those committees (and therefore responsible to them) or are independent of them. This is particularly so with the clinic executive directors now sitting on the Board. The presence of clinic executive directors on the Legal Services Board gives an impression that regional representatives are indeed delegates of the regional committees. Philosophically, it would be preferable for employees of either the Legal Services Board or the regional clinics not to sit as members of the Legal Services Board.

In order for the Legal Services Board to fulfil its statutory mandate, regional representatives should maintain effective communication with the regions. Ideally, they should bring to the Board local views on the programs being provided and advise the Board on the impact of any initiatives being proposed. They should also assist the area they represent in understanding the legal aid plan and in obtaining access to it. Accordingly, these regional representatives need not be associated with a particular agency but must simply be a suitable representative of their region. They may indeed be better able to fulfil their function if they are independent of the regional committee.

Each of the regions of the Northwest Territories should be represented on the Legal Services Board. For true regional representation, it is important that municipalities, band councils, and regional councils be involved in the appointment process.

The executive director of Arctic PLEI formerly sat on the Legal Services Board. This appears to have been based on an interpretation that it was a "regional committee" as defined in the Act which it is not.

The Deputy Minister of Justice is a member of the Legal Services Board, as was the previous Deputy Minister. Some of those the Task Force consulted felt that the presence of a senior government representative compromised the independence of the Board. It is difficult to assess the weight of this in the face of the other factors which currently contribute to the perception that the Board does not operate independently from government, and therefore a change in this feature of the board's composition is not identified as a short-term priority.

Having the Chairperson chosen by the members of the Legal Services Board seems to have worked well. It ensures that the person chosen as chair has the confidence of the other Board members. The Chairperson must be knowledgeable about the issues being discussed by the Board. It would therefore be best if a person had been a Board member for at least two years before assuming the chair.

It would assist the Legal Services Board's proper functioning if, where possible, continuity in Board membership is maintained. Appointments to three-year terms, with the terms of about one third of the Board members expiring in any one year, would provide the necessary continuity. While continuity is desirable, there should also be a limit on the number of terms so that there will be "new blood" from time to time.

(b) Role of the Board

Members of the Legal Services Board are paid an honorarium of \$100.00 for each day they spend in Board meetings. The Chairperson is paid \$150.00 per day. These rates have existed for many years. Legal Services Board members should receive reasonable remuneration for the time spent on Board business. The amount presently being paid may not encourage busy people to commit time to sit on the Legal Services Board. The remuneration to be paid to Board members should not be confined to the time actually spent by them at Board meetings but should include work done by them between meetings of the Board and any committee work that is required of them.

If the members of the Legal Services Board are to become and to remain conversant with issues of relevance to the Board, they must meet regularly and as often as possible having regard to the cost of convening Board meetings. At least three face-to-face meetings per year would be preferable and as many telephone meetings as may be necessary. It would be best if agendas and materials could be circulated far enough in advance to allow members to be adequately prepared.

The Legal Services Board, as a whole, would have greater insight into the issues affecting each region if, at least once every two years it held meetings outside of Yellowknife. This would also enhance its credibility as a community-based board.

The issues which the Legal Services Board deals with are complex ones, and the work of the Board has grown significantly over the past decade. It is important that Board members have full orientation followed by continuing information updates to allow them to fulfil their responsibilities. Currently, there is no orientation process for new members of the Board nor is any education or development program conducted for the Board as a whole. The main source of information for Board members are the reports which the Executive Director prepares about four times a year.

Legal Services Board meetings are presently called by the Executive Director. The Executive Director told us that, in conjunction with the Chairperson, he sets the agenda for Board meetings, assists his staff in making travel arrangements, attends meetings and prepares the resulting minutes. Each meeting therefore takes about two weeks of his time.

The increasing workload which the Legal Services Board has to deal with makes it particularly important to allocate responsibilities appropriately amongst the various staff members, and between staff and Board. When the plan was less busy, the Executive Director could be involved in most matters but the division of responsibilities needs to be re-examined. Minutes need not be kept by the Executive Director but could be taken by a recording secretary who need not be employed by the Legal Services Board so long as he or she could maintain confidentiality when necessary. Meetings should be at the call of the chair, and the agenda for Board meetings could be set by the Chairperson with the assistance of the Executive Director. This is probably the preferable approach anyway, although the wording in the Act, which makes the Executive Director the secretary to the Board, and gives him responsibility for giving notice of meetings, may contribute to the confusion as to where these responsibilities lie.

There is always a delicate balance in this sort of relationship: the board must exercise the control necessary for proper accountability, without interfering unduly in the details of administration. The Legal Services Board needs to re-examine the extent to which it has left not only the operations of the Legal Aid office, but the setting of policies as well, to the Executive Director and staff. It would be appropriate for the Board to take a much more active role in establishing policies to guide the operations of the office, and in monitoring the manner in which these policies are carried out.

(c) Management Committee

Since the Board's members come from a large geographical area, it is difficult for all of them to meet more than about three times a year. A smaller management committee (composed of three members of the Board) could offer more immediate control over the Board's operations and provide the Executive Director with greater direction. This committee should be a permanent committee of the Board and should meet at least eight times per year but as many times as often as necessary. Meetings of this committee could be conducted by telephone.

At one time, the Legal Services Board had an executive committee which was composed of all the members of the Board who resided in Yellowknife. This committee was disbanded because the regional representatives had no input between meetings of the whole Board. The lack of regional representation is not an inherent problem with a management committee: it would be possible to structure the committee so that it was required to include at least one person from outside of Yellowknife.

A written policy setting out the committee's terms of reference would help make it clear what the role of the management committee was in relation to the Board as a whole. If there was a management committee, it could assume direct responsibility for some of the Board's more specific tasks, and for ensuring that the recommendations from this report which are accepted are carried out.

Because of the relatively small size of the Board, and the distance people need to travel for meetings, a profusion of permanent committees would not be desirable. The management committee need be the only standing committee of the Board; ad hoc committees can be established as needed.

The management committee would maintain a close relationship with the Executive Director, and would act as his immediate supervisor. The management committee would be the logical group within the Legal Services Board to see that the Executive Director position is given a job description and that the position's contract, salary and benefits are reviewed. It would also be the best group to establish the Executive Director's annual goals and objectives (subject to approval by the whole Board) and to conduct an annual performance review. The Executive Director does not presently have a job description. A performance review was conducted by the Board in June 1990. This was the first such review of the present incumbent and there has not been a review since.

(d) Fiscal Responsibility

The Legal Services Board should administer the Northwest Territories's legal aid plan independently. This means that it, without intervention from government, should develop the policies and programs it views as being necessary. The Board should ask government for a budget, government should grant it a budget and the Board should decide how the budget is to be spent.

Government should expect the Legal Services Board to be more financially responsible and accountable and should stop funding the Board's deficits. This will give the Board the incentive to develop appropriate systems and personnel to monitor its own financial position. This can only work if government supports the decisions made by the Board in order to keep within its budget and if the base budget given to the Board is adequate.

The Legal Services Board should have the personnel and systems within its own office to monitor its own financial position and that of the regional clinics and to maintain useful statistical information. It must receive timely quarterly reports from the regional clinics as required by their agreements with the Board. Clinic directors (regional directors) should be responsible to the Executive Director for the cost of legal aid, including judicare services within their region.

The existing Legal Services Act provides the Legal Services Board with all the tools it requires to be independent. The Board is established as an independent body corporate with the ability to hire personnel and sole authority to administer the legal aid plan. The Board need only become financially responsible (i.e. operating within a balanced budget), resist political interference and promote itself as an independent agency in order to become truly independent.

(e) Legal Services Board Staff

The chief executive officer of the Legal Services Board is the Executive Director who is appointed by the Legal Services Board. He is not a member of the public service of the Northwest Territories and his salary and benefits are set by the Board.

In addition to the Executive Director, the Legal Services Board office in Yellowknife has four administrative employees whose duties are the following:

1. Administrative Assistant -- responsible for the scheduling of counsel, arrangement of travel warrants for court circuits and the processing of lawyers' accounts. This position reports to the Executive Director.
2. Legal Account Clerk -- responsible to assist the administrative assistant in the processing of accounts to ensure that they are accurate and comply with Legal Services Board policy (for example, ensures that lawyers only charge 0.1 hours for letters and telephone calls unless proper substantiation is provided). All claims for discretionary time on circuits are taken to the Executive Director for approval. About 25% of this person's time is devoted to processing accounts for the various clinics.
3. Legal Aid Clerk -- responsible for inputting data into the office's data base for criminal matters. Also responsible for filing materials, invoicing for contributions, doing the banking, and answering inquiries about legal aid eligibility on criminal matters. Follows up with lawyers to obtain legal aid applications before accounts are processed.
4. Secretary -- does the Executive Director's correspondence and filing. The position also assigns civil cases (of which there were more than 500 in 1990/91) and does data input for civil cases. Also acts as the receptionist and handles travel warrants.
5. In addition, the office periodically has casual or summer students in order to assist with the work load.

Work patterns which developed when the volume of work was much lower need to be reviewed. Some of the things which take up the Executive Director's time could be handled by the office's administrative staff. For example, the Executive Director should be able to delegate such tasks as organizing Legal Services Board meetings and the preparation of minutes resulting from those meetings. With simpler account forms, and clearer procedural guidelines, review of all but exceptional accounts and applications could be handled by administrative staff.

There is an impression that the Legal Services Board office needs more staff, or needs staff with particular areas of expertise, such as financial management. It is difficult to judge whether additional staff, or staff with additional skills, would be needed once new administrative procedures are put in place. An organizational review of the Legal Services Board office would need to be conducted after the changes are made, in order to determine what additional needs exist.

(f) Legal Staff of Clinics

Currently, the executive directors of the regional clinics are paid a small base salary by the regional boards for their role in administering the regional clinic. On top of that, they are entitled to bill the Legal Services Board for eligible legal services which they provide. They may also be retained privately to provide legal services outside of the legal aid plan, and may bill their clients directly for that work. There are several good reasons for putting the executive directors of the regional clinics on salary.

The current arrangement involves a great deal of unnecessary paperwork. Formal accounts must be prepared for all billings to the Legal Services Board. A certain amount of information is required to support the claim of the Government of the Northwest Territories under the cost-sharing agreement with the Government of Canada, but this could be collected in a more summary form, and substantial administrative work could be eliminated if the executive directors did not need to render accounts. This would be particularly beneficial given that the unavailability of office staff in small communities has often meant that the lawyers themselves must prepare the accounts.

Lawyers are placed in the regional clinics so that they can do more than simply criminal defence work, or other types of "billable" legal aid work. It would be preferable to have a payment system which did not have a built-in incentive for them to emphasize criminal defence work at the expense of, for example, poverty law. This could be balanced by a contractual provision identifying the minimum level of criminal defence work, (for example X number of circuits per year), or other legal services, which they must provide.

Similarly, the arrangements for remunerating clinic lawyers should not provide an incentive for them to serve those ineligible for legal aid, at the expense of legal aid clients. If they were on salary, they could still provide services which are covered under the legal aid plan to those in their communities who did not qualify financially, on the basis that those people would reimburse the Legal Services Board for the full cost of the services.

This would be consistent with the purposes for which the clinics are located in the regions.

Elsewhere in this report, we discuss the role of courtworkers in the legal aid system in the Northwest Territories. Generally, courtworkers should be properly trained, have access to lawyers, and have contact with other courtworkers for support, guidance and assistance. Executive directors (even in those clinics or programs with courtworker trainer/supervisors) must be actively involved in the recruitment, training and ongoing support of courtworkers and must be given the time to carry out these functions.

5. Delivery Models

Legal aid in the Northwest Territories is presently delivered by a "mixed-model" system -- a combination of regional legal aid clinics and "judicare" or private lawyers.

There are three "delivery models" employed by Canadian legal aid plans -- judicare, staff lawyers and clinics.

(a) Explanation of Terms Used

A "judicare" model employs private lawyers to act for legally-aided clients. A central office determines eligibility and refers clients to lawyers. Lawyers are paid either hourly or by means of block fees for the services they perform. A tariff establishes the fees that may be charged and the lawyers bill the plan. Judicare models tend to provide services in the traditional legal aid areas (i.e. primarily criminal defence and family). The plan is governed by a board. In theory, judicare models provide clients with the same representation they would receive if the lawyer was on a private retainer. The judicare model is the sole delivery model used in the regions of the Northwest Territories which do not have regional clinics. It is used to provide additional resources in the regions having clinics.

"Staff" lawyers are employed by the legal aid plan, operate out of offices provided by the plan and are paid a salary. Such plans are administered by a public commission at arm's length from government and the law society. Like judicare plans, they tend to serve the traditional areas of criminal and family law. This model has not been used in the Northwest Territories.

"Clinics" are usually located within the communities they serve. Services are delivered by lawyers (who are usually on salary) and "paralegals" or community representatives. They are funded by block grants from the legal aid plan and governed by community-based boards. They attempt to serve the distinct legal needs of the community such as "poverty law" matters (i.e. landlord-tenant, social assistance and unemployment insurance appeals and workers' compensation) which tend not to be served by the other models. This model (or a hybrid form of it) is represented in the Northwest Territories by the clinic offices in Iqaluit, Rankin Inlet, Pond Inlet and Tuktoyaktuk which also do criminal and family law.

(b) Choice of Delivery Models

The Task Force was not able to do a detailed examination of the cost of the services provided by the existing combination of delivery models in the Northwest Territories, or

to compare the cost of providing legal aid services using other delivery models. The Legal Services Board does not keep statistics on the costs incurred in each region so it was not possible to arrive at firm conclusions on the cost advantages associated with any particular delivery model. Furthermore, as the Report prepared by the Canadian Bar Association National Legal Aid Liason Committee entitled "Legal Aid Delivery Models: A Discussion Paper" ("the CBA Report") concluded, there are as yet no adequate quality standards for legal services and therefore no means of determining the cost-effectiveness of the various delivery models -- including staff lawyers.

The two delivery models presently being used in the Northwest Territories each have their advantages. The private bar offers a large pool of lawyers having a variety of interests, levels of experience and expertise. Its independence may well be essential to proper representation in cases where there are potential conflicts of interest. Finally, it provides a virtually inexhaustible pool of resources which may be desirable if the case load of clinics becomes too great.

Clinics located in regional centres tend to give clients greater access to lawyers. Lawyers employed by regional clinics tend to have greater familiarity with the region in which they work. They also tend to have more knowledge of their cases and clients than is possible when lawyers are flown in. Communities tend to have a sense of ownership in their clinics and therefore feel a closer connection to the justice system. Finally, location of lawyers in the regions can reduce travel and accommodation costs.

Our community consultation revealed that, generally, people from communities served by regional clinics were more aware of how to gain access to legal services than were those from communities without resident lawyers. Common complaints from the latter group were that lawyers travelling with the court did not have sufficient time to properly prepare cases or to spend with their clients. Although lawyers on successive circuits may attempt to report to subsequent counsel, it is certainly the perception of many that lack of continuity substantially lessens the quality of service being provided. It may be that encouraging lawyers to travel to communities in advance of court circuits would improve the quality of the services being provided.

Legal aid should provide indigent clients with the same access to legal services as those who are able to pay for their own legal services. Accordingly, since the legal needs of indigent clients include poverty law problems, those services should be as available to indigent individuals as services in the traditional areas of criminal and family law.

The judicare model is not able to effectively deliver poverty law services. Firstly, the underlying premise of judicare plans is that poor people have the same legal problems as those with money but simply suffer from an inability to pay for their own lawyer. Accordingly, the distinct legal problems of the poor tend not to be recognized. Secondly, judicare plans rely on clients to bring their problems to the plan. Without appropriate education, indigent individuals tend not to recognize poverty law matters as being "legal"

and therefore do not seek assistance. Thirdly, most private lawyers do not have sufficient incentive to become knowledgeable about poverty law issues in order to provide proper representation in these areas. These services lend themselves to being provided by courtworkers with appropriate training and supervision.

Clinics are best suited to the delivery of public legal education and poverty law matters since they are more responsive to the needs of the region and the clients which they serve. They tend to make clients aware of their rights in civil and poverty law matters. Furthermore, once clinics have been established, they tend to become advocates within the plan for their own continued existence even in the face of financial restraint. They also tend to be policy advocates for indigent clients. Clinics also allow lawyers and courtworkers to work together, each performing the services they are able to provide. These functions should be seen as an important part of the role of clinics, and they should be encouraged to do these things as well as straight legal counsel work.

All clinic directors complained about the shortage of competent support staff and the extent to which this prevents them from providing the services expected of them. Furthermore, the heavy criminal case load prevents those offices from devoting sufficient resources to civil and poverty law matters or to public legal education.

(c) Staff Lawyers

Staff lawyer systems are particularly vulnerable to higher case loads. As the CBA Report concluded at page 238

"The major threat to quality in a staff model is the ease with which staff caseloads can be driven up, thereby reducing the quality of service to individual clients faced with a monopoly service provider. Continuing fiscal restraints tend to doom staff models to high caseloads, given the emphasis upon cost minimisation."

Staff lawyers generally are less able than clinic lawyers to handle poverty law cases and provide public legal education. Like judicare lawyers, staff lawyers tend to be reactive, requiring potential clients to bring their legal problems to the office. Case volumes and limited budgets tend to limit staff systems to the traditional areas. Staff plans also tend to copy private practice so that staff lawyers specialize only in the traditional areas.

Another concern is that the Northwest Territories has a relatively small bar and without legal aid work being available to private lawyers, would risk having no private lawyers who practise criminal law.

(d) Clinics

The Legal Services Act provides that the Legal Services Board may recognize regional committees to deliver legal aid services in the regions. The Act prescribes requirements which must be met before a committee can be recognized as a "regional committee". Each regional clinic is established as a society and governed by a board of directors which is drawn from the region served by the clinic. Each society has a contract with the Legal Services Board to provide legal aid services in the region.

The composition of the regional boards is not the same in each region. The board of Maliganik Tukisiniakvik is elected from the people of Iqaluit who are members of the society. Memberships are purchased for \$1.00 at the meeting at which the election takes place. In other regions (e.g. Keewatin), the hamlet councils in the region each appoint a person to sit on the regional board.

Each clinic is managed by an executive director who reports to the clinic board and has a separate contractual relationship with the Legal Services Board. Executive directors are paid a salary for the management and other services they provide to the clinic. Their contract with the Legal Services Board requires them to perform legal aid services at the same hourly rates as private lawyers are paid. They are guaranteed a minimum income for the legal aid work they carry out but must bill the plan before they can be paid.

In the regions where the clinic board is drawn from across the region, the executive directors told us that a disproportionate amount of clinic budgets is devoted to meetings of the regional board. This limits the resources clinics have available to perform their mandates.

Clinics find it extremely difficult to find administrative staff with the necessary skills. They cannot compete financially with other employers (especially government) for the qualified people that are available in the regional centres.

One of the Task Force members with experience on a regional board is of the view that regional boards should be entirely eliminated. This individual feels that most regional board members have insufficient knowledge of the legal system to make useful contributions to the clinic, and do not have enough knowledge or experience to participate in the management or administration of the clinic. In his view the money spent on board meetings could be better spent on programming. This view was not adopted by the Task Force as a whole, but it did influence the recommendations relating to the more focused role of regional boards, and the greater emphasis on regional representation on the Legal Services Board itself.

Regional boards have no orientation process. Their members spend little time learning about their roles and responsibilities as board members. There is an impression that board members are often not clear as to what their mandate is.

Regional boards do play an important role in advising clinical directors about the regions' needs and interests. As long as clinic executive directors are lawyers coming in from outside of the region, there is great potential for regional boards to play an important role in cross-cultural training of executive directors, and in providing community input into the selection of executive directors.

Although the regional boards are formally responsible for the management of the clinics, in fact they must rely very heavily on the executive directors in this area. It is difficult for the regional boards to supervise legally trained executive directors. If clinic boards were freed from management, a broader range of people from the regions would be able to act as board members. Presently, the primary role of regional boards is to provide community advice to their executive directors. A change to an advisory role would therefore represent little change in fact.

Regional boards could be restructured at the same time the contracts with clinic executive directors are renegotiated. The existing agreements involving the executive directors, the Legal Services Board and the regional boards would be terminated and a single agreement between the executive director (who would then be called the "regional director") and the Legal Services Board would be substituted. Contracts between clinic lawyers and the regional boards would similarly be terminated and fresh agreements entered into between the Legal Services Board and those lawyers.

Once the role of the regional boards had become primarily advisory, it would no longer make sense for courtworkers and clinic administrative staff to be employees of the regional board. If they became members of the public service of the Northwest Territories, working under the umbrella of the Legal Services Board, they would be paid on a uniform basis, on a scale competitive with the other government jobs in the community. The problem of having the staff employed by a regional board reporting to an executive director employed by the Legal Services Board would be avoided. They would have more opportunities for mobility in their work, skill upgrading, and so on.

Communication between the regional clinics is a good thing. The executive directors of the regional clinics, MacKenzie Court Workers and Arctic PLEI and the Legal Services Board's own executive director held a meeting in the spring of 1990 to discuss issues of common concern. Since then, two further meetings have been held in conjunction with meetings of the Legal Services Board. This has been a positive development, and these meetings should continue on at least an annual basis. They provide the regional executive directors with an opportunity to act as a support group, to establish co-operative relationships with their professional colleagues, and to share management techniques and legal research.

(e) Location of Clinics

There are presently no community legal aid clinics outside of the predominately Inuit and Inuvialuit communities of the Baffin, Keewatin and Beaufort regions. To our knowledge, there has been no demand for such facilities in the Dene/Metis communities in the MacKenzie Valley and Great Slave regions. We are not aware of a concerted demand from the Western communities for a different form of legal aid services other than those being offered by the private bar. This may be because of the greater number of lawyers in this region and the shorter geographical distance between most communities and the nearest lawyer. At the same time, we recognize that there is a greater need and demand for certain services such as public legal education than is presently being provided by the legal aid plan.

The Task Force discussed whether the present regional clinics are situated in the most appropriate locations or whether any of the present offices should be closed. We have had insufficient resources at our disposal to make any recommendations concerning specific clinics or offices. We have however concluded firstly, that the relocation or closing of any office would not involve any significant saving to the legal aid plan. Secondly, the existing clinics have become integral parts of the regions which they presently serve. Accordingly, no action should be taken until as many as possible of the communities being served by clinics have been visited and the groups who requested that clinics be situated where they are have been consulted. The services being performed by those offices and how relocation of those offices would affect the provision of those services should be examined. The reasons for the present locations of clinics and the expectations which now exist in the communities where they are located, must be assessed.

Any review of this issue should address the needs of the various regions and users of the legal aid system. Accordingly, before any further clinics (other than that presently planned for the Kitikmeot) are established, the Legal Services Board should decide which regions or groups of users are most in need of enhanced services. In the shorter term, the Legal Services Board could use courtworkers and private lawyers to improve services; in the longer term, it should determine whether further regional clinics will be needed. It should also consider whether a specialist clinic to serve the needs of clients having poverty law or child welfare problems should be established in Yellowknife or elsewhere. Any plan should account for the limited resources that will be available to establish such clinics.

(f) Courtworkers

The term "courtworkers" is used in this paper for convenience, but it should be noted that different terms are used in the various regions of the Northwest Territories for people who have similar functions. In the Maliganik Tukisiniavik clinic, the term used is "settlement

representatives". People in some regions feel that the term "courtworker" implies that the person is working for the court, but in other regions the term is well accepted. Often the local people use a term in their own language which describes the function of a "courtworker". There does not seem to be any good reason to insist on a uniform term across the Territories.

Courtworkers are an essential element of the legal aid plan and of the justice system in the Northwest Territories. The physical size of the jurisdiction, the remoteness of many communities, and the distance to the nearest lawyer make it impossible for many people to obtain the services of a lawyer. Courtworkers must play a "front-line" role by assisting individuals in obtaining legal advice or representation and, providing advice and representation themselves when they can. They also act as a conduit between lawyers and clients.

MacKenzie Court Workers Services and the regional clinics employ courtworkers in as many of the communities as they can. Except for those in the regional centres, courtworkers are employed part-time. They are paid only for days in which they are required in Justice-of-the-Peace court and Territorial Court and a limited number of other days. Some have offices, others work out of their homes. The clinics have had difficulty in retaining courtworkers because of the stressful nature of the job and the low pay in comparison with other work that is available in the community. Most of the courtworkers with whom we spoke felt that they were not being paid enough. Some said that if their pay did not significantly improve, they would be looking for another job.

Unlike the regional clinics, Mackenzie Court Workers Services does not have a staff lawyer. The courtworkers with MacKenzie Court Workers Services must therefore contact private lawyers whenever they need legal advice or assistance. On an informal basis, this often works quite well, but some courtworkers have the impression that they should not bother private lawyers with their questions. This should be clarified, so that courtworkers know that they are entitled to seek advice. This could be achieved by assigning members of the legal aid panel on a rotational basis to take telephone calls from courtworkers who needed assistance. Lawyers should be permitted to charge the plan for any assistance they provided, although this might require a change to the federal/territorial cost-sharing agreement.

All courtworkers receive periodic instruction and training. MacKenzie Court Workers Services and Maliganik Tukisiniakvik each have full-time trainers/supervisors who lead training programs and are able to provide individual assistance and support. They also travel to assist in recruitment and training. There are no training programs for courtworkers in the Northwest Territories other than those offered by the clinics and MacKenzie Court Workers Services.

Courtworker training was given high priority by courtworkers and others from communities served by courtworkers. These people felt that courtworkers need more

opportunities to develop their professionalism, and to broaden the range of legal services they are able to provide. This is particularly important since the role of Justices-of-the-Peace will be increasing as the expanded J-P training program progresses, and courtworkers are normally the ones who assist people who appear in J-P court in their communities.

Courtworkers need training and support including orientation sessions, training seminars and updating or refresher sessions. Where appropriate and applicable, if no course is offered in the Northwest Territories, courtworkers could attend programs offered in southern Canada. Courtworkers must also receive manuals and video and audio instruction tapes to assist them in their home communities. They should also have access to legal resources such as the Northwest Territories statutes and the Criminal Code in their communities.

There is considerable interest in a longer-term training course for individuals who would like to become courtworkers. Such a program could be offered by Arctic College and, could provide more in-depth training programs than can be offered in shorter-term training programs. The development of such a program could be an important element of "professionalizing" courtworkers. Moreover, if courtworkers are, for example, to conduct summary conviction trials and bail hearings as part of a move to a more community-based justice system, they should receive more extensive formal training.

Training seminars also enable courtworkers to meet lawyers and other courtworkers who can assist them when new or difficult situations arise. The Task Force was told by many courtworkers that their contact with other courtworkers was especially useful. In many instances, once courtworkers got to know one another at training seminars, they were able to provide each other with the practical guidance and support that would not occur to lawyers or supervisors.

Courtworker programs must find innovative means of providing continuing support to their courtworkers. Training programs are one means of providing such support but contact must be maintained between those meetings. Supervisors, clinical directors and lawyers (whether private or employed by a clinic) on court circuit must make the effort to contact courtworkers when in the communities.

Some of the courtworkers with whom we spoke complained that some lawyers and judges neither treat them with respect nor avail themselves of the services which they can provide. This was not the universal experience: courtworkers told us that most lawyers were helpful and supportive, but the fact that it came up at all is a matter for concern. The Legal Services Board could encourage lawyers to support courtworkers by including courtworkers in a periodic evaluation of all panel members. A successful completion of this evaluation would be required if the lawyer was to stay on the panel. The Legal Services Board could also provide panel members with a written explanation of the role of courtworkers, and the relationship between courtworkers and lawyers.

Courtworkers should be given full scope for providing legal services, along with the training to allow them to do that effectively. They are a key community link for the justice system, and are often in a better position to understand the circumstances of cases than legally trained people from a different culture.

(g) Private Lawyers

The Legal Services Act presently requires the Legal Services Board to assign legal aid work on a rotational basis to the various members of the panel. The Act also requires that panels of resident and non-resident lawyers be established.

The Executive Director of the Legal Services Board told us that there is presently one panel which consists of all lawyers that do legal aid work. There is no formal organization to the system by which legal aid work is assigned: those responsible for making assignments simply "know" which lawyers are interested in doing which types of work. Certain lawyers (i.e. those wishing to do criminal law and prepared to travel on court circuits) are assigned to accompany court circuits and lawyers wishing to act in civil or other matters are assigned those cases.

Maliganik Tukisiniakvik (which uses private bar panel members to supplement the work of its two clinic lawyers) has established a practice of assigning the work to a restricted group of private lawyers in Yellowknife. A small number of lawyers is therefore used in this region. Accordingly, the same lawyer often attends the same community for successive court circuits, allowing a greater understanding of the communities to develop, and continuity to be maintained in cases which carry over to subsequent circuits. This seems to work well in the Baffin, and it would seem reasonable to adopt a similar system in other regions.

Clients charged with criminal offences are afforded their choice of counsel in a limited class of cases prescribed by the Legal Services Act (i.e. those in which the provisions of the Criminal Code subject them to the possibility of life imprisonment). Otherwise, a lawyer is assigned by the legal aid office to handle the client's case.

The rotational system outlined in the Legal Services Act seems to be aimed at providing equal opportunities to lawyers, rather than at ensuring the best possible service for indigent people. Legal aid should be a means of ensuring that indigent clients can exercise their right to counsel: it should not give lawyers a right to clients.

The system used for assigning lawyers to legal aid matters could be improved in a number of ways. Specialized panels could be established for criminal and civil work, with perhaps some further areas of specialization within the civil category.

Regional panels could be used by the Legal Services Board as a means of seeing that legally-aided clients are afforded the best possible representation having regard to the limitations, financial and otherwise, that govern the provision of legal aid services in the Northwest Territories. It is not realistic for most clients charged with criminal offences who reside in communities far removed from the nearest lawyer to have their choice of counsel.

Clients could be allowed their choice of counsel whenever it is economically feasible. Choice of counsel would be available in Yellowknife, Hay River, Inuvik and any other community with more than one resident law firm.

Representation of legally-aided clients in the communities could be improved if lawyers are familiar with their client's circumstances and the cultural, economic and other unique features of the region in question. Panels could be established for each region in which membership would be contingent on the annual completion of a program developed by and for that region. This program would include cross-cultural training.

The cost of regional cross-cultural training could be borne by the Legal Services Board but lawyers would attend without charge to the plan. The selection of a small group of lawyers to provide services in each region would also provide a greater sense of collegiality amongst the members of the panel.

Lawyers on legal aid panels need to have a good understanding of the organization and of their responsibilities as panel members. Panel members should be provided with information and education on the billing systems and procedures required by the Legal Services Board, their obligations to (where appropriate) obtain contributions from legal aid recipients and to assist courtworkers. It should also teach them about the plan's eligibility requirements. They should be provided with an introduction to legal aid, the application and approval procedure and the organization of the plan.

The policy manual being prepared by the Legal Services Board office is a step in the right direction. It will need to be completed once the additional policies recommended in this report are developed.

Separate panels of lawyers performing administrative law, family and non-family civil legal aid could also be established. Civil clients would be allowed their choice of counsel unless there is a lawyer with a regional clinic or a lawyer in their community available to handle the matter. If clients show no preference, counsel could be rotationally assigned.

The Task Force has considered whether lawyers should be required to complete continuing legal education courses in order to maintain their membership on the legal aid panel. There is no general requirement like this anywhere else in Canada. Such a requirement is not realistic for the Northwest Territories because it is difficult for most Northwest Territories lawyers to obtain access to those courses which are almost exclusively held in southern Canada.

The Legal Services Act provides no means for removal of a panel member other than for cause. It would be preferable for the Legal Services Board to admit a lawyer to a panel for a fixed term or to establish terms and conditions for continued panel membership. This would allow periodic review of the quality of the work performed by panel members.

6. Coverage

The existing Legal Services Act provides that all criminal and civil matters (except those specifically excluded by section 45(4) of the Legal Services Act) shall be covered by legal aid for clients that qualify.

Legal aid is provided for civil matters when there is a possibility of imprisonment, but not for territorial offences, even those with the potential for severe consequences. Several of those the Task Force consulted questioned why legal aid was not available for "bootlegging", for example, a charge that is taken very seriously in most communities. Coverage for serious territorial offences would be consistent with the principle of giving indigent persons access to the same legal services they would be reasonably likely to seek if they could afford them. This coverage would require a change in the cost-sharing agreement.

For some reason, actions relating to elections are excluded from this list, and from the list of eligible services in the federal/territorial cost-sharing agreement. This seems unfair, especially in a jurisdiction which does not operate on the party system, and where candidates frequently have little in the way of outside backing. People in many parts of the Northwest Territories did not have the right to vote until the 1960's and the political system is one which was imposed upon northerners. With this history, it is particularly important to encourage and support participation in the system, and it seems unfair to exclude actions involving elections from legal aid coverage.

There are no written guidelines beyond the provisions in the Act to govern what services may be covered by the plan. This is of particular concern in civil matters, where it means that discretion must be exercised at the most senior level on each application. In the consultations the Task Force held, concern was raised about lack of consistency in decisions about when legal aid would be approved. Further, it was the view of some, that it was more difficult to get legal aid for legal services in matters such as social assistance appeals and maintenance applications than it was for criminal cases. If this perception is accurate, there is an overtone of "gender inequality", since most criminal legal aid applicants are men, and a greater proportion of those seeking legal aid for family law or "poverty law" cases are women.

In other civil matters, there seems to be a particular need for a policy to deal with civil actions such as personal injury actions which are often funded through contingency fee arrangements (see section 32 of the Act). Such a policy should provide for legal aid coverage in exceptional circumstances.

It seems that the position of the child in child welfare and contested custody cases is not always being independently advanced. Consideration should be given to the independent representation of children. There is as yet no office of the amicus curiae or

child advocate that represents children in such situations. We understand that counsel is appointed and paid for by the legal aid plan in child welfare cases. This is an area which the Legal Services Board needs to work with the Departments of Social Services and Justice and the family bar to develop a solution.

The establishment of written policies as to the services to be covered by legal aid would not only require the Board to address the perceived inequities and inconsistencies: it would also provide clear information to the bar and the public about what was available.

7. Eligibility

Sections 30 and 31 of the Legal Services Act provide that individuals are not eligible for legal services if they can afford to pay for legal services from their own resources. The prescribed financial criteria are to include reference to the "assets, liabilities, income and expenses and requirements of the applicant and his or her spouse and dependants". Section 53(1)(a) gives the Commissioner, on the recommendation of the Minister of Justice, the power to make regulations that prescribe these financial criteria.

Section 4 of Schedule "C" of the Legal Services Regulations, enacted pursuant to the Legal Services Act, states that an individual will be eligible for legal aid if he receives all or most of his income from social assistance. An individual who would be eligible for social assistance if required to go outside the legal aid plan for legal services, will be eligible for legal aid but may be required to contribute to the cost.

These criteria do not appear to be strictly followed in the granting of legal aid applications in the Northwest Territories. In practice, there is no identified income level at which people cease to be eligible for legal aid. Discretion is applied generously. It is difficult to assess whether it is applied consistently. The provisions in the Act and Regulations could be applied with less reliance on personal discretion if guidelines were established which identified income levels and contained calculations for taking into account regional variation and family obligations. Because the Regulations tie eligibility to social assistance, the guidelines might provide for increases in eligibility levels when social assistance levels changed. Such guidelines would mean that most eligibility decisions could be handled at an administrative level.

Where eligibility is determined is important, as well as how the decisions are made. The clinic executive directors said that it would make more sense to determine eligibility at the regional level, and both the Executive Director and the Department of Justice's Director of Finance concurred. This would not be appropriate in the absence of clear guidelines setting out standard criteria for eligibility decisions, but once those are in place it would be a logical step.

8. Contributions

In 1990/91, the Legal Services Board office recovered about \$30,000.00 of its roughly \$3,000,000.00 budget from client contributions toward the cost of the services provided. Clearly many legal aid clients are simply unable to contribute towards the cost of the services provided to them, but the proportion of contributions seems unduly low. Systems are needed both to identify cases in which the recovery of contributions is possible, and to track cases in which contributions could be recovered at some later stage. It would be possible to monitor files in order to ensure that clients who are assessed monthly contributions do in fact pay them.

Enforcement of contribution requirements may be challenging, but at the very least, there should be a connection to continued or future eligibility for legal aid. Further work on a case could be halted until the payments have been brought up-to-date, or a person could be denied legal aid on any further applications unless the assessed amount was paid. These determinations would be subject to appeal.

Contributions could decrease the overall cost of the legal aid plan. They also have the added benefit of giving clients an idea of the cost of the legal services they are receiving, and encouraging them to accept greater responsibility for the course of the legal proceedings.

The Task Force considered the possibility of requiring that all applicants for legal aid pay a small contribution or "user fee" before legal aid will be provided. Such a fee would not be applied to individuals on social assistance or other hardship cases. This issue was discussed by the CBA Report:

"User fees have been implemented or attempted by a number of plans: Manitoba (1978), Quebec (1982-83, proposed, but not implemented), British Columbia (1982-83) and Saskatchewan (1987). The implementation of a user fee in Manitoba was evaluated, with instructive results. User fees are not employed as revenue-generating devices, but primarily for their deterrent effect upon applicants. Despite the selective nature of the enforcement of Manitoba's \$35 fee, with waivers automatic for those on social assistance and discretionary for other hardship cases such that only 10 per cent of clients actually paid the fee, there was a clear "announcement" effect, with an immediate and dramatic decline in applications, followed by an over-all decline in applications of 15 per cent in the year after the fee was imposed. Of note is that civil (mostly family) applications dropped by 18 per cent compared to a smaller drop of 11 per cent for criminal applications. Apart from this broad shift in composition, the case composition remained largely the same, as did the composition of the clientele by income levels. The imposition of a user fee appears to have a strong deterrent effect, across all categories of applicants, with slightly greater deterrence for family and civil clients.

A moment's thought reveals how similar the effects of a user fee are to a one-time suspension of client intake, another restraint measure employed in British Columbia and sporadically in other plans. The difference is that a suspension of intake will simply deal the bulk of client demand, as clients wait and courts adjourn cases, whereas user fees appear to cause a permanent drop in applications. Again, intake suspension will generally have an across-the-board effect, with a slight preference for criminal cases and some family matters as emergency exceptions."

These consequences are unacceptable. Access to the legal system for the indigent is the fundamental purpose of legal aid, and therefore the imposition of something which has been found to have a deterrent effect would be unsupportable. The Report of the Alberta Task Force on Legal Aid arrived at a similar conclusion.

Beyond that, there would be some very real practical complications if a flat-rate "user fee" were adopted for legal aid in the Northwest Territories. Much of the legal aid work is performed on circuit, and there is no obvious way for fees to be collected from clients encountered on circuits in small communities. It does not seem reasonable for either lawyers or courtworkers to be saddled with the responsibility for collecting the fees (in cash since most communities do not have banks and people do not always have bank accounts), and carrying them back to Yellowknife. When individual contributions are assessed, an agreement can be signed and clients can be invoiced by the Legal Services Board; if this procedure were adopted for the smaller "everyone pay" fees, the prospects for collection would be dismal.

9. Tariff

Private lawyers are permitted to charge the legal aid plan at prescribed hourly rates. These rates are established from time to time in an agreement between the Legal Services Board and the Law Society. There are no limits on the time which may be charged by lawyers to the plan, although recently the Legal Services Board has instructed the Executive Director to impose limits on the number of hours which will be allowed before further approval is required.

On court circuit, private lawyers are permitted to charge a "per diem" rate for each day of the circuit. These per diem rates are approximately the equivalent of six hours at the regular rate. The Legal Services Board is also permitted to pay "discretionary time" for extra hours put in by lawyers while on circuit. The present policy of the Legal Services Board office is that such discretionary time is not to exceed one additional hour for each five days of court circuit.

Legal aid rates (both hourly and per diem) are lowest for articling students and increase with experience so that the highest rates are charged by lawyers with five years experience or more. The present schedule of rates is as follows:

Years of Experience	Rate per hour	Per Diem Rate
Students-at-Law	\$ 42.80	NIL
Less than two years	\$ 64.00	\$ 375.00
More than two years		
less than five years	\$ 75.00	\$ 465.00
More than five years	\$ 92.00	\$ 550.00

As with other Canadian legal aid plans, legal aid rates in the Northwest Territories are considerably lower than private rates. Northwest Territories legal aid rates are, however, amongst the most generous of any plan in Canada.

The Legal Services Board office reviews lawyers' accounts to ensure that legal aid applications have been completed, receipts for disbursements accompany the account and that certain Legal Services Board reporting requirements have been met. Accounts are not routinely scrutinized to determine if the amount being charged is reasonable. The office does, however, review accounts to determine if an explanation has been provided for letters or telephone calls that exceed 0.1 hours.

The Northwest Territories is at present the only jurisdiction in Canada with a legal aid tariff that allows its lawyers to charge an unlimited number of hours on legal aid matters, (subject to taxation). This is of obvious benefit to the private bar, but there is no reason to think that the open-ended payment system which applies for all legal aid work (except that on court circuits) provides any particular benefit to clients. In fact, to the extent that this approach inflates the cost of judicare services, it is detrimental to those who use the legal aid system. The plan must establish a reasonable budget for such services and must stay within that budget.

At the end of the budget year that commenced 1 April 1990 and ended on 31 March 1991, an application for supplementary funding had to be made to the Financial Management Board in order to fund the Legal Services Board deficit. Of the \$876,658.00 which the Legal Services Board was over budget in 1990/92, \$837,177.00 resulted from fees paid to private lawyers (and disbursements incurred by private lawyers) engaged in legal aid matters. This is but the most recent of many supplementary funding requests made by the Legal Services Board in order to eliminate annual deficits. It raises questions about whether the funding base is realistic.

If private lawyers are to continue to provide legal aid services to a significant number of clients, some means of limiting costs must be created. We see no other methods of doing this than by imposing limits on the amounts which lawyers are permitted to charge for the services they provide.

The best way to limit judicare costs, without being unfair to the practising bar, would be to establish a "block-fee" tariff. In criminal matters such a system would have a specific fee for a certain type of service, such as a guilty plea and sentencing in a break and enter charge, for example, regardless of the number of court appearances or time required to complete a particular case. In civil matters, the tariff would be a little more complicated, but it could be done by breaking standard types of actions down into segments, and setting block fees for those segments.

The present system of per diem rates for court circuits is a form of block fee, and it remains the most practical way of handling the circuit court work.

The fees under a block-fee tariff would be calculated by determining the average time for preparation and court appearances in classes of cases that could be treated in the same way because of their similarity. In order for the system to be fair, these tariffs should be reviewed annually in order that their real value is not eroded by increases in the cost of living.

When a set or "block" fee was charged, a simpler or "short-form" account could be sent to the plan once the matter had been completed. This short-form account could be more readily produced and processed, therefore requiring less overhead for the lawyer and

less administration for the legal aid office. The lawyer could be paid more quickly: it should be possible to have the payment out within twenty days of receipt by the plan office.

There will always be exceptional cases, and with block fees, there would be a need for a written policy setting out both the circumstances where the block fee can be varied, and the criteria to be used in identifying those circumstances. Where there was a variation from the block fee, a more detailed account would be required. Any complaints about the manner in which the Executive Director (or regional director) had applied the guidelines could be handled by the appeals committee.

A tariff established by agreement of a tripartite committee with equal representation from the Legal Services Board, the bar, and government would have the best chance of being acceptable to all concerned.

The Legal Services Act need not be amended in order to bring about this change in the tariff. The Legal Services Regulations would, however, require amendment.

Representatives of the Criminal Law Subsection of the Canadian Bar Association, N.W.T. Branch, expressed the view that block fees might discourage lawyers from putting as much into preparation and thereby reduce the quality of representation that clients receive. The Task Force did not accept this point of view, for several reasons.

Legal aid should not enable an individual to obtain better representation than would be paid for by a reasonable person of modest means who was paying for his lawyer. Reasonable block fees (or ceilings) enable lawyers to charge a fair fee that is proportionate to what a reasonable person of modest means could afford and would consider worth paying for.

The legal aid plan should encourage lawyers to appropriately prepare for their cases but not to put in excessive amounts of time. This can be accomplished best if lawyers are paid a fair block fee which is based on the average preparation time that a competent lawyer would require.

Most criminal matters are resolved by a guilty plea and are not remarkable or unusual. The time taken to provide the service should be relatively constant, with minimal administrative cost incurred in processing accounts. The amount of overhead incurred by lawyers in preparing short-form block-fee accounts will be much lower than what they incur for preparing the more detailed accounts which are required at the present time.

The professional obligation of lawyers to provide high quality services to clients goes beyond the financial arrangements for payment, and it does not seem likely that lawyers would be willing to compromise their professionalism because of a block-fee system.

It was suggested that a block-fee tariff might discourage the participation of more experienced lawyers in legal aid work. To some extent, this happens already under the current tariff, and this is consistent with the experience elsewhere in Canada. While legal aid should not be simply a "training ground" for young lawyers, it is common across Canada for lawyers to do a lot of legal aid work at an early stage in their careers and move on to other areas later on. A block-fee system should not be any more likely to deter experienced counsel than the current tariff is: the assumptions about the necessary amount of preparation time which are the basis for block fees may even work to the advantage of those with greater experience.

Lawyers should not be discouraged from acting for legal aid clients by the amount they are permitted to charge, but this will not occur so long as the tariff is continually reviewed to ensure that it provides fair remuneration.

Higher overhead costs in the Northwest Territories were given as another reason why block fees would not be appropriate. This assumes that the block fees would be set at an inadequate level, and the Task Force would not recommend that. The current tariff tends to be higher than that in other Canadian jurisdictions, in recognition of the higher costs in the north, and presumably block fees could be based on the average fees for certain services under the current tariff.

With block fees, all lawyers providing similar services would bill on the same basis. This would be an attractive feature in a publicly funded plan.

10. Disbursements

The costs of expert witnesses are paid by the legal aid plan if the Executive Director approves the expenditure. The lawyer handling the case must provide a letter explaining why the expert is needed. Experts are usually funded in serious criminal cases but, if the need is demonstrated, in less serious cases as well.

The Task Force heard criticism regarding the availability of expert witnesses. Representatives of the Family Law Subsection of the CBA, N.W.T. Branch told us that experts (particularly psychiatrists and psychologists) seem to be more readily approved in criminal matters than in family cases. The Subsection members felt that different considerations should govern the availability of experts in family cases as they usually assist in resolving cases outside of court with an ultimate saving to the system as a whole and the legal aid system in particular. Written policy guidelines concerning the circumstances in which expert witnesses will be approved would help members of the bar plan the conduct of their cases, and would also improve the consistency of decisions in this area.

Experts must continue to be available for both criminal and civil cases (especially the serious ones). Some attempts have been made at coordination through the Legal Services Board office to ensure that when experts are used they are made available for as many cases as is reasonably possible, and this would be a good area for further development. The high cost of bringing southern experts to the Northwest Territories can be justified best if those experts can provide services or advice relating to several cases on the same trip.

The cost of "home study reports" (normally prepared by a psychologist) in contested custody cases will only be covered by the plan if the court will not pay the cost. The Government of the Northwest Territories, Department of Social Services formerly funded preparation of home study reports but stopped doing so in 1989. Since then, funding for such reports has essentially been done on a case-by-case basis. This area should be examined when the policy concerning expert witnesses is developed, to make sure that cases are not "falling through the cracks".

11. Appeals

There will always be exceptional cases which may justify a departure from the tariff or policy. Presently, appeals are heard by the Legal Services Board. Disputes arising from the Executive Director's taxation of a lawyer's account are, however, usually resolved directly between the lawyer and the Executive Director. Appeals therefore have been rare (indeed there were none in 1990/91 according to the Legal Services Board's Annual Report for that fiscal year). This is not surprising because the Executive Director seldom if ever significantly reduces a lawyers' account.

The Executive Director should not both tax lawyers' accounts and attempt to resolve complaints about his taxation which would otherwise be taken to the Legal Services Board to whom he is responsible. Written policies for the review of accounts would simplify this somewhat. Once the bill has been taxed, the prescribed review process should be followed, instead of having a further review by the Executive Director.

The current structure, where the Legal Services Board is both the supervisor of the person taxing the accounts, and the appellate body responsible for review of taxation decisions, has an inherent problem. The Legal Services Board as the governing and policy-making body within the legal aid system should not also be involved in decisions made in individual cases. The Board may, for example, wish to give the Executive Director direction on how certain cases are to be handled. Such direction would clearly interfere with the Board's ability to impartially hear an appeal. The creation of a separate body to deal with appeals would allow the Board to focus its attention more directly on its responsibility to supervise the Executive Director.

The other advantage of a separate appeals committee is that it would not be distracted by all of the other issues before the Legal Services Board, and therefore could deal expeditiously with appeals. The committee would apply the policy of the Legal Services Board but would be independent of it and therefore not subject to the institutional "natural justice" difficulty described above.

12. Public Legal Education

Federal public legal education and information funding comes from a different source within the Department of Justice, Canada, unrelated to the legal aid program. The Federal Government enters into a funding agreement directly with whatever agency the territorial government designates. The Arctic Public Legal Education and Information Society was established in 1985, to meet the requirement of a separate organization to receive the federal funding. Arctic PLEI obtains annual core funding of about \$170,000.00 from the Governments of Canada and the Northwest Territories. It obtains additional funding for special projects. Its limited core funding makes it difficult for Arctic PLEI to deliver public legal education outside of Yellowknife.

During its community consultations, probably the single complaint about legal aid that the Task Force heard most frequently was that clinic lawyers and courtworkers do not do enough public legal education. People expect their local clinics and courtworkers to provide public legal education. It is not generally understood that the federal-territorial funding agreements require a separate agency to provide public legal education. Clinic lawyers and courtworkers are generally the people in their communities with the best understanding of the justice system, and therefore it is not surprising that people expect that they will share their knowledge with others.

The terms of the various cost-sharing agreements effectively prohibit MacKenzie Court Workers Services or the regional clinics from providing public legal education. Arctic PLEI has the resources to prepare materials for distribution across the Territories, but does not have the capacity to deliver public legal education services in all regions. Regional clinics have the resources (such as interpreters/translators, courtworkers/community representatives, geographic location and legal knowledge) to carry out public legal education at the community level but may not have the time or expertise to produce the materials needed to support presentations. It therefore makes sense for Arctic PLEI and the Legal Services Board to join forces in order to offer better public legal education. Community level public education is particularly important in the Northwest Territories, because written materials do not help those who do not read.

Eventually, Arctic PLEI should merge with the Legal Services Board. The funding could be redirected to the Legal Services Board, but it would need to be identified as public legal education funding. The executive director position from Arctic PLEI could be transferred to the Legal Services Board to direct public legal education and information for the entire legal aid plan. It might be possible to get by with less support staff once the functions of the two agencies were joined.

There are some prerequisites to having Arctic PLEI become part of the Legal Services Board. Firstly, the federal/territorial cost-sharing agreements must be changed to allow the clinics and MacKenzie Court Workers Services to perform public legal education. The Legal Services Board should also be designated as the agency providing public legal

education in the Northwest Territories. Arctic PLEI's core funding could then be transferred to the Legal Services Board. This funding must be preserved within the Legal Services Board budget if responsibility for public legal education is transferred to the Legal Services Board.

Secondly, if public legal education is to be credible, it must be delivered by an independent agency from government. Accordingly, the Legal Services Board must have an arm's-length relationship with government before it can assume responsibility for public legal education.

Thirdly, the Legal Services Board must become a community-based organization with representation from all regions in the Northwest Territories. This would be accomplished by following the recommendations for restructuring the Legal Services Board which are contained in this report.

13. Name of Legislation and Board

It is anomalous that the legislation establishing the legal aid plan and the agency administering the plan respectively are known as the "Legal Services Act" and "Legal Services Board". This may tend to confuse members of the public. "Legal aid" is a more specific term and the name "Legal Services Board" may not inform someone unfamiliar with legal aid in the Northwest Territories that the Board is responsible for legal aid.

14. The Mission of Legal Aid

This report should assist the Legal Services Board in planning over the next five to ten years. All policies adopted by the Legal Services Board, whether or not they follow the recommendations made in this report should attempt to further the following fundamental objectives:

1. Economically disadvantaged people should be afforded the same access to legal advice and representation as reasonable persons of modest means who pay for their legal services.
2. The legal aid plan must be sensitive to the various cultures in the Northwest Territories and the extent to which cultural differences impede their access to legal advice and representation and their understanding of the justice system.
3. The legal aid plan should attempt to assist indigent people in obtaining solutions to the legal problems they encounter in their everyday lives.
4. The legal aid plan should attempt to provide equal access to justice.

The Legal Services Board might wish to consider adopting a mission statement reflecting principles such as these.

The public discussion of the directions for legal aid should be welcomed and this report and its recommendations should therefore be disseminated to the public.

15. **Recommendations**

1. The Legal Services Board should be restructured. There should be nine members, (all residents of the Northwest Territories), appointed by the Minister (of Justice) as follows:

- (a) one to be nominated by the Federal Department of Justice;
- (b) one to be appointed from the public service of the Northwest Territories;
- (c) one to be nominated by the Law Society of the Northwest Territories. This individual should be required to be a member of the legal aid panel resident in the Northwest Territories (this is not presently the case);
- (d) six regional representatives to be chosen as follows:
 - (i) one from the Baffin communities (Iqaluit, Lake Harbour, Cape Dorset, Pangnirtung, Clyde River, Broughton Island, Igloodik, Hall Beach, Pond Inlet, Arctic Bay, Nanisivik, Resolute, Grise Fjord and Sanikiluaq) ;
 - (ii) one from the Keewatin communities (Rankin Inlet, Whale Cove, Arviat, Chesterfield Inlet, Baker Lake, Repulse and Coral Harbour);
 - (iii) one from the Kitikmeot communities (Cambridge Bay, Coppermine, Spence Bay, Gjoa Haven, Bathurst Inlet and Pelly Bay);
 - (iv) one from the MacKenzie Delta/Beaufort communities (Inuvik, Aklavik, Fort McPherson, Arctic Red River, Tuktoyaktuk, Paulatuk, Holman and Sachs Harbour);
 - (v) one from the North Slave and Sahtu communities (Colville Lake, Fort Good Hope, Fort Franklin, Fort Norman, Norman Wells, Rae-Edzo, Lac La Martre, Rae Lakes, Snare Lake, Yellowknife, and Detah);

- (vi) one from the South Slave and Deh Cho communities (Fort Smith, Hay River, Enterprise, Fort Simpson, Wrigley, Fort Liard, Nahanni Butte; Jean Marie River, Trout Lake, Kakisa, Fort Providence, Snowdrift, and Fort Resolution);

In order to effect these changes, the Legal Services Board should request the Minister to introduce a bill containing the following amendments to the Legal Services Act:

- (a) section 3(3)(a) should be amended to read "one lawyer on the panel to be appointed on the nomination of the President of the Law Society;
- (b) section 3(c) should be repealed [this section provides for the appointment of a "member of the public to the Legal Services Board"];
- (c) section 3(e) should be repealed and a provision substituted to effect the regional appointment process contemplated in this recommendation;
- (d) section 3(f) [which provides for the membership of the Executive Director on the Legal Services Board] should be repealed.

Until these statutory changes are made, the Minister should be requested to make all new appointments in accordance with these recommendations on an ad hoc basis.

2. The Legal Services Board should also request that the Minister introduce amendments to the Legal Services Act providing that employees or people working under contract with the Board, or any regional clinic or other organization funded through the Board are not eligible to be members of the Legal Services Board. This would mean that such persons could not be appointed, and could not remain as members should they become a member of the prohibited category after appointment.

This recommendation should be implemented immediately with respect to new appointments. It would apply to current appointments only after the statutory changes have been introduced.

3. After the changes to board structure (recommendations 1 and 2) have been implemented, the Legal Services Board should examine whether the Deputy Minister of Justice or any member of the public service of the Northwest Territories should continue to sit on the Board. If the Board decides to recommend a change in this regard, an amendment to the Legal Services Act may be necessary.

This should be considered within one year of the implementation of the other changes.

4. The Legal Services Board should recommend to the Minister that the following process be adopted for regional appointments to the Board:

- (a) When a position becomes vacant, the Minister should contact the Regional Council or Councils or other appropriate organizations in the region to ask them to recommend persons qualified for appointment.
- (b) The letter from the Minister should attach a summary of the responsibilities of Legal Services Board members. The letter should indicate that the member's appointment will be for a fixed term of years (if possible advising what the term will be) and that the member will represent all people in that region.
- (c) Regional Councils or other organizations being asked for recommendations should, if possible, select more than one name for the Minister's consideration. They should make their recommendations after consulting with municipalities, band councils, or other local representatives in their regions.

Those being asked for recommendations should be told that their advice will not be binding on the Minister but will be given considerable weight.

5. Appointments to the Legal Services Board should usually be for a three-year term and members should be eligible for three three-year terms.

This recommendation should be implemented immediately by the Legal Services Board asking the Minister to make all further appointments for three-year terms. Additionally, the Board should immediately request the Minister to introduce a bill containing an amendment to the Legal Services Act stating that members should be eligible for a maximum of three three-year terms on the Board.

6. There should no longer be a representative from the Arctic Public Legal Education and Information Society ("Arctic PLEI") on the Legal Services Board. The Legal Services Act does not provide for representation of Arctic PLEI on the Legal Services Board. That organization is not a regional organization and should not be directing legal aid policy development. The input of Arctic PLEI can be sought whenever public legal education is being considered. The executive director of Arctic PLEI should continue to be involved in the meetings of the regional directors.

The Legal Services Board should ask the Minister to implement this immediately by refraining from appointing a person from Arctic PLEI to the Legal Services Board.

7. The Legal Services Board should assume responsibility for public legal education in the Northwest Territories. This should not be done until the following preconditions have been met:

- (a) The Board is community/regional-based as has been suggested in recommendation #1;
- (b) Funding arrangements are restructured in order to allow the Board to provide public legal education and the cost to be equally shared between the Government of the Northwest Territories and the Government of Canada;
- (c) Other changes recommended in this report have been implemented so that the Board is perceived as being sufficiently independent of government to deliver those programs.

The Legal Services Board should immediately commence work to implement this policy and should be delivering public legal education within three years.

8. When public legal education and information is transferred to the Legal Services Board:

- (a) A separate portion of the budget should be designated and maintained in the Legal Services Board budget for public legal education; and
- (b) The executive director of Arctic PLEI position should become a director of public legal education position within the Legal Services Board reporting to the Executive Director.

9. Meetings of the Legal Services Board should be at the call of the Chairperson or any three members of the Board. The role of the Executive Director should be to send out the notice and make the arrangements in accordance with the directions from the Chairperson or the three members of the Board.

Although the recommended procedure may be consistent with the Legal Services Act as it is now, there is some ambiguity between the Act and Regulations, and some confusion based on historical practice. The Legal Services Act should be changed to clearly state how meetings of the Legal Services Board are to be called.

The Legal Services Board should recommend this amendment to the Minister, and should, in the meantime, follow the recommended practice for calling meetings.

10. The Legal Services Board should meet face-to-face at least three times per year. If additional meetings are necessary, agendas and material should be circulated by facsimile in advance so that productive telephone meetings can be conducted. Whenever possible having regard to budgetary constraints and convenience, meetings should be held outside of Yellowknife. We suggest that at least once every second year, the Legal Services Board should hold a meeting outside of Yellowknife.

The Legal Services Board should hold its next meeting outside of Yellowknife within two years of the date of this report. Otherwise, this recommendation should be implemented immediately.

11. The Chairperson of the Legal Services Board shall (as is presently required by the Legal Services Act) be chosen by the Board from amongst its members. Since the Chairperson speaks for the Board and is also its "leader", that individual should, if possible, remain in that position for, at least two years and should preferably have been a member of the Board before being selected as its Chairperson.

This does not require a change to the Legal Services Act and is a practice that could be implemented immediately.

12. The Legal Services Board should choose two of its members to serve along with the Chairperson as a management committee. The management committee would manage the affairs of the Board between meetings. At least one of the members of the management committee (who could be the Chairperson) should come from outside of Yellowknife. One of the members should be designated as the vice-chair of the Legal Services Board.

This committee should meet as often as necessary but at least eight times per year (some of which could be by telephone). The committee should hold its first meeting within a month of being constituted.

The Legal Services Board should approve a written policy establishing the management committee on the terms recommended.

This recommendation can and should be implemented immediately. The management committee should be chosen and hold its first meeting within a month.

13. The management committee should be the only permanent committee of the Legal Services Board. Ad hoc committees for specific shorter-term purposes may be established from time to time as needed.
14. The Legal Services Board should develop a program for orientation of new Board members, as well as institute a board education and development program, and a mechanism for board evaluation.

This recommendation should be implemented so that an orientation, board education and development program exists within six months of the date of this report.

15. The Executive Director should not be an "ex officio" member of the Legal Services Board but should be available to the Board on request as a resource person.

The Legal Services Board should recommend to the Minister that the Legal Services Act be amended to

- (a) Repeal section 3(3)(f) [which gives the Executive Director a seat on the Legal Services Board];
- (b) Amend section 3(6) to remove the words "... other than the Executive Director ...";
- (c) Repeal section 3(8) which makes the Executive Director the ex officio secretary of the Legal Services Board;
- (d) Repeal section 4(3) [which states that the Executive Director cannot act as the Legal Services Board's Chairperson];

- (e) Amend section 5(1) to remove the words "... other than the Executive Director and ...".

- 16. The Executive Director should not take the minutes of Legal Services Board meetings. That function should instead be delegated to a suitable person (not a member of the Board) who can maintain confidentiality and keep accurate minutes.

This recommendation does not require legislative change and can therefore be implemented immediately.

- 17. The Executive Director should prepare a written report of his actions and the plan's status for each meeting of the management committee which should be circulated to the members of the committee in advance of the meeting. This report shall include a statement of the plan's financial position which should include a comparison with budget items for each element of the program.

Minutes of all management committee meetings should be circulated to all members of the Legal Services Board immediately after they have been prepared. The committee should also provide a written report to the Legal Services Board for each meeting of the whole Board.

This recommendation should be implemented immediately.

- 18. The following steps should be taken within 12 months of the meeting of the Legal Services Board at which this report is adopted.

- (a) The preparation of a formal written job description for the Executive Director position. This should be presented for the approval of the Legal Services Board at its next meeting.
- (b) The contract for the Executive Director position should be reviewed and a revised contract (if revisions are deemed appropriate) should be presented at the same Board meeting as the Executive Director's job description.
- (c) The salary and benefits for the Executive Director should be reviewed and revised if necessary;
- (d) The management committee should immediately conduct a performance appraisal of the present Executive Director. Such a review should be conducted annually thereafter.

19. The Legal Services Board should work towards independence and accountability in its financial affairs. This would mean assuming responsibility for performing all of the financial transactions needed for its own operations, and operating within its budget.

As a part of this process, government and the Legal Services Board should examine the funding base for the Legal Services Board's operations and make the necessary revisions to reduce the likelihood of future applications for supplemental funding.

Steps should commence immediately so that this recommendation is put into effect fully within three years.

20. The Legal Services Board should work with government to establish a new legal aid tariff. This tariff should consist of a schedule of fees to be charged by lawyers when working on legal aid matters.

The Legal Services Board should write to the Minister requesting that a tripartite committee be established with equal representation from the Legal Services Board, government and the private bar. The mandate of the committee would be to negotiate a tariff containing the following components:

- (a) Continuation of daily rate for legal aid services on circuit;
- (b) Limits on preparation time for circuits, and for all court proceedings;
- (c) Block fees in all criminal matters outside of circuits, developed to reflect the average time for preparation and court appearances in particular classes of cases;
- (d) Block fees in all civil matters outside of circuits, developed to reflect the specific steps taken in different types of cases; and
- (e) Some capacity for discretion in exceptional cases, with such discretion to be exercised in accordance with written policy guidelines established by the Legal Services Board.

Revision of the tariff does not require statutory amendment, but does require a change to regulations. The new tariff should be in operation within two years of the adoption of this report (or sooner if possible).

21. The Legal Services Board should develop new simplified billing procedures ("short-form accounts") to go with the block-fee system. In situations where lawyers request and obtain variations from the block fees, more detailed "long-form accounts" would still be required.

This recommendation should be implemented by commencing the process to develop these billing procedures immediately. They should be in place within two years of the date of this report.

22. By the time the new tariff and short-form account system has been implemented, the Legal Services Board should be required to send out cheques in payment of all short-form accounts within 20 days of receipt. Interest should accrue on all such accounts not paid within that time.

This recommendation should be implemented by commencing the process to develop these procedures immediately. The Legal Services Board should be able to comply with this recommendation within two years of the date of this report.

23. The Legal Services Board should review the availability of expert witnesses. It should develop a budget which should establish the funds available for experts.

There is no legal impediment to this taking place immediately, and it should be accomplished within six months of the adoption of this report.

24. A written policy should be developed which will:

- (a) Set out the conditions which must be met before expert witnesses will be made available;
- (b) Ensure that experts will be made equally available in all types of cases where the use of experts is appropriate;
- (c) Indicate that approval for the preparation of a report does not ensure that approval will be given for the witness to testify (i.e separate approval will be required and different conditions must be satisfied);
- (d) Encourage the use of experts who are brought to the Northwest Territories by the legal aid plan in as many other cases or ways (e.g. seminars) as possible.

The Legal Services Board should commence work on this recommendation immediately and it should be in place within one year of the date of this report.

25. The Legal Services Board should ensure that the financial eligibility criteria set out in s. 4 of Regulation 92 ("the Legal Services Regulations") under the Legal Services Act be applied. The Board should develop a written list of the income levels for eligibility in each region (with family size factored in), based on the social assistance criteria.

There should be a graduated scale specified showing the level at which no contribution would be required, the levels at which legal aid with contributions would be available, and the level at which the person would not be entitled to legal aid. The levels would vary regionally, on the same scale as social assistance calculations vary regionally. There should be very limited discretion for departure from the identified levels, and this should be exercisable only in accordance with a written policy of the Legal Services Board.

This should be updated as social assistance levels change. All panel members, regional clinics, and courtworkers should be provided with a copy of this document, and it should also be available to members of the public.

This recommendation should be put into effect immediately.

26. The Legal Services Board should establish a written policy that would be applied in assessing contributions in all legal aid matters. This policy should deal with the following:
- (a) All cases in which contributions can be immediately or periodically recovered should be identified based on the graduated scale for eligibility;
 - (b) A system for tracking those files in which the periodic payment of contributions has been required should be developed. The system should provide a means of notifying the lawyer having carriage of the matter whenever such contributions have not been made such that, when feasible, all further work on the file is halted until the outstanding payments have been made;
 - (c) Files in which recovery of some or all of the costs incurred at some later stage of the proceedings should be identified and monitored so that the plan is protected;

- (d) Any bail monies deposited should, as a matter of course, be assigned to legal aid before any further legal aid is provided; and
- (e) A person who has been assessed a contribution and has not paid it should not be eligible to be granted legal aid under any further application.

Work on this policy should commence immediately and the policy should be in effect within two years of the date of this report.

27. The Legal Services Board should request the Minister to introduce an amendment to the Legal Services Act to allow the Board to obtain judgment against a person who had not paid an assessed contribution. Judgment would be obtained by the filing of a certificate signed by the Executive Director with the Supreme Court.

This request should be made immediately.

28. Eligibility for legal aid should be determined on a regional basis by the regional clinics using the policies established by the Legal Services Board. Similarly, assessment of ability to contribute to the costs of the legal services will also be done regionally.

Work on this recommendation should commence immediately and it should be in effect within two years of the date of this report.

29. The more detailed procedures should allow eligibility and contributions decisions to be made by administrative staff. A mechanism of spot reviews by the Executive Director should be developed to ensure that the policies are being followed consistently.

Work on this recommendation should commence immediately and it should be in effect within two years of the date of this report.

30. The Legal Services Board should request the Minister to introduce an amendment to s. 33 (3) (b) of the Legal Services Act so that legal aid recipients who honestly come forward to provide information about changed financial circumstances are not unfairly penalized.

This request should be made immediately.

31. The Legal Services Board should request the Minister to introduce an amendment to the Legal Services Act in order to establish a separate appeals committee. This committee would hear all appeals from decisions of the Executive Director or regional directors regarding individual cases, (eligibility, contributions, coverage, lawyers' accounts, etc.).

This appeals committee would be appointed by the Minister on the recommendation of the Legal Services Board and would have three members, at least one of whom should be a non-lawyer and at least one of whom should be a lawyer. One member should be from outside of Yellowknife. The quorum for this committee would be two in order for it to be able to sit on short notice if necessary. Any panel which is considering an appeal of a taxation, or concerning a legal question, should include a lawyer.

When taxation of a lawyers account is in question, the portion of the account which is not the subject of the appeal would be paid in the normal course and would not await the outcome of the appeal.

This request should be made immediately.

32. In conjunction with the recommended administrative changes, (short-form accounts, block fees, determination of eligibility, assessment of contributions, appeals procedures, role of regional clinics, etc.), an organizational review of the Legal Services Board's office and operations should be conducted. Until the changes are in place, and the review is completed, it is difficult to say whether the present staff is adequate for the work that needs to be done.

The review should include an analysis of the duties being performed by the Legal Services Board's administrative staff and of the skills necessary to perform the tasks necessary; the preparation of formal written job descriptions and qualifications for each employee; identification of systems capable of providing the Legal Services Board with the statistical and financial information necessary to operate the plan within budget.

This should be commenced as the administrative changes are put into effect, and should be completed within two years.

33. The relationship between the Legal Services Board and regional boards should be revised so that:

- (a) The regional boards would be called "regional advisory boards";
- (b) A fixed portion of the regional budget would be allocated to board costs;
- (c) The board would have responsibility for:
 - (i) cross-cultural training of executive directors and visiting lawyers; and
 - (ii) advising clinic lawyers and the Legal Services Board of matters of importance within their regions.
- (d) The board would be consulted when any new lawyer is hired for their region.

Written terms of reference for regional advisory boards should be established by the Legal Services Board after consultation with those boards.

The agreements between the Legal Services Board and the regional committees should be amended to reflect the revised role of the boards. Work should commence immediately so that it is in effect within one year of the date of this report.

- 34. Each region should have the freedom to determine how it will select members for its regional advisory board and how it will obtain community input into program issues.
- 35. The Legal Services Board should recommend to the Minister that amendments to the Legal Services Act be introduced to repeal ss. 17 to 26 (relating to regional committees), and s. 27 (relating to the advisory committee). New sections should be included to provide for regional advisory committees as outlined in these recommendations.
- 36. The clinic executive directors should become "regional directors". Regional directors and other clinic lawyers should be employed directly by the Legal Services Board. The regional directors should report to the Executive Director of the Legal Services Board, and any other clinic lawyers should report to the appropriate regional directors. The terms and conditions of the employment of each regional director and lawyer should be established in a written contract.

The duration of the contracts with regional directors and clinic lawyers should suit regional needs. A pay scale should be developed that applies to all lawyers and directors. The lawyers' and directors' pay should be determined by the following:

- (a) their level of experience and expertise;
- (b) the size of the clinic;
- (c) the amount of supervision required of them; and
- (d) the cost of living in the community (i.e. a settlement allowance should be paid).

The revised contractual arrangements should be developed so that, within one year of the acceptance of this report, the existing contractual arrangements are terminated and new contracts are immediately put in place with the individuals occupying those positions at that time. These contracts are within the current authority of the Legal Services Board under s. 11 (f) of the Legal Services Act.

37. Regional directors and lawyers should have the following terms included in their contracts:

- (a) the number of weeks of criminal defence work expected of them;
- (b) a requirement for regular visits throughout their region;
- (c) their attendance at all meetings of the regional directors;
- (d) their administrative and management responsibilities with their own clinic;
- (e) their continuing legal education opportunities; and
- (f) their obligation to organize and participate in public legal education activities to be carried on by their clinic.

38. Regional directors and clinic lawyers should be paid salaries, and should no longer receive any of their income from legal aid fees, or from private fees for legal services. Their contracts should provide for group benefits to the extent possible.

The Legal Services Board should commence work on this recommendation immediately and it should be in place within one year of the date of this report.

39. Regional directors (or other lawyers employed in clinics) should not be allowed to carry on a private practice. They shall, however, be allowed to act for private clients that do not qualify for legal aid in matters that can be covered by legal aid. The cost of performing such services shall be payable to the Legal Services Board by the private client at legal aid rates.

The Legal Services Board should commence work on this recommendation immediately and it should be in place within one year of the date of this report.

40. It is presently unclear as to whether private lawyers who are being paid a per diem rate while on court circuit can keep any fees collected from private clients. The Legal Services Board should clarify this by developing a written policy on this subject. This policy should be consistent with the Board's policy regarding payment of the Legal Services Board for work performed by clinic lawyers for private clients.

Work should commence on this policy immediately and it should be in place within one year of the date of this report.

41. Annual evaluations of regional directors should be performed by a committee composed of:
- (a) a member of the Legal Services Board from the region in which the clinic is located or a member of the regional advisory board;
 - (b) the executive director of the Legal Services Board; and
 - (c) one other individual on the Legal Services Board.

Clinic lawyers should be evaluated by their regional director.

This should be done within one year of the implementation of this report.

42. The administrative staff and courtworkers employed by the regional clinics (i.e. all employees except the lawyers) should become employees of the Legal Services Board, and members of the public service of the Northwest Territories. These employees should continue to report to the regional directors. Any courtworkers working less than half-time could be employed on contract.

This change should follow the establishment of the new contractual arrangements between the regional directors and the Legal Services Board and should therefore occur between one and three years of the date of this report. This is permissible under s. 16 of the current Legal Services Act even before the amendments relating to the regional committees are put into effect.

43. The Legal Services Board, with the advice of the regional directors, the regional advisory boards, and the Mackenzie Court Workers Services board, should establish a policy:
- (a) Setting out the services which courtworkers can perform;
 - (b) Identifying the types of training needed by courtworkers;
 - (c) Outlining the mechanisms by which courtworkers may obtain legal advice and support; and
 - (d) Emphasizing the importance of courtworkers in delivering legal aid services in the Northwest Territories.

The Legal Services Board should commence work on this recommendation immediately and it should be in place within one year of the date of this report.

44. The Legal Services Board should request the Minister to introduce amendments to the Legal Services Act to remove the restriction in s. 43(2) which prevents courtworkers from appearing unless they have leave of the court.

This request should be made immediately.

45. The Legal Services Board should review salary and benefits being paid to courtworkers. This review should involve a comparison of the amounts being paid to courtworkers with positions of similar responsibility and requiring similar education within the public service of the Northwest Territories. The review should also compare the salary and benefits being paid by the various courtworker programs. A revised pay structure which provides equitable compensation to all courtworkers in the Northwest Territories, at a level which recognizes their contribution to the legal aid plan, should be established.

Any funding requests necessary to implement this recommendation should be made (and approved) before the new scheme comes into effect.

46. Since the clinic lawyers and regional directors will no longer be receiving payment for individual legal services, they would not be required to submit bills. The information required by the Legal Services Board and the Government of the Northwest Territories to meet the requirements of the cost-sharing agreement and to develop statistics for long term planning should be provided in a simpler manner. There should be analogous simplification in the paperwork required from private lawyers receiving per diems for circuit work. Forms or other procedures to provide this information should be developed.

The Legal Services Board should commence work on this recommendation immediately and it should be in place within one year of the date of this report.

47. After the recommended administrative and financial changes have been made, the tariff has been revised, and complete statistical information is available, the Legal Services Board should study the location of regional clinics. This study should address the possibility of future regional or specialized clinics having regard to the limited funding available.

No further clinics (other than that already planned for the Kitikmeot) should be planned until this analysis has been completed.

This recommendation should be started when the work on the other recommendations has been completed and it should be implemented within two to five years of the date of this report.

48. The Legal Services Board should, wherever possible, provide eligible clients with their choice of counsel. Civil litigation clients should have their choice of counsel, unless there is a local lawyer able to handle the matter.

In Yellowknife and other centres having more than one lawyer, criminal legal aid recipients should have their choice of counsel. Duty counsel should be assigned by the Legal Services Board but should not be allowed to continue as counsel after the initial appearance.

This practice should be adopted immediately as far as possible within the current legislation. The Legal Services Board should write to the Minister to propose that section 37 of the Legal Service Act be repealed.

This recommendation should be started when the work on the other recommendations has been completed and it should be implemented within two to five years of the date of this report.

49. The Legal Services Board should develop a revised criminal legal aid panel system. Separate panels would be created for each regional court circuit and the completion of an annual cross-cultural training program (to be established by each region) would be a requirement of panel membership.

This recommendation should be implemented within two years of the date of this report.

50. Separate panels of lawyers doing administrative law, family and non-family civil matters should be created. Clients should have their choice of counsel from the members of these panel. If clients express no preference, counsel should be rotationally assigned.

This recommendation should be implemented immediately.

51. On admission to the legal aid panel, each lawyer should be given a package of information including:

- (a) An explanation of tariff and billing procedures;
- (b) An explanation of the appeal process;
- (c) Instructions on the lawyer's responsibility with respect to legal aid applications and contributions;
- (d) A description of how the legal aid plan works;
- (e) An outline of the role of courtworkers and the lawyer's obligations to them; and
- (f) All policies of the Legal Services Board.

The Legal Services Board should commence work on this recommendation as soon as possible and it should be in effect within one year of the date of this report.

52. The Legal Services Board should request that the Minister introduce amendments to ss. 34 and 35 of the Legal Services Act to provide that membership on legal aid panels can be for a limited term, or can be terminated other than for "cause". The amendment should give the Board the authority to establish criteria for continued membership, including an evaluation mechanism.

This request should be made immediately.

53. The Legal Services Board should allocate regional budgets for the cost of judicare services in criminal defence matters. The Executive Director should develop the regional budgets after consultation with the regional directors. The total budgeted amount for criminal defence matters in the Northwest Territories should be broken down into the budgeted amounts for such services in each region. Such a budget should be approved by the Legal Services Board for the 1993-94 fiscal year.

The regional directors should be responsible for administering the judicare budgets within their regions, including making arrangements for visiting defence counsel from the criminal legal aid panels for those regions.

54. The Legal Services Board should provide for services in poverty law matters. A written policy should be established setting out the types of services to be funded, and identifying which services should be performed by courtworkers, and which should be done by lawyers.

The Board should request that the Minister seek to have the cost-sharing agreement with the Government of Canada changed so that all courtworkers, not just those employed by a regional legal aid clinic, could provide these services.

The Legal Services Board should evaluate the services provided under this policy within the next three to five years with a view to determining whether a clinic specializing in such matters should be established in Yellowknife or an ombudsman appointed to assist in such matters.

This recommendation should be implemented immediately.

55. The Legal Services Board should endeavour to send counsel in advance of court circuits in order to interview clients before the court party arrives. This should be done wherever this is economically feasible.

This recommendation should be implemented immediately.

56. The Legal Services Board should establish a policy to provide for the representation of children in child welfare cases, and in contested custody cases where appropriate.

The Legal Services Board should commence work on this recommendation immediately and it should be in place within one year of the date of this report.

57. Lawyers on the legal aid panel should be assigned, on a rotational basis to take questions from court workers throughout the Northwest Territories.

This should be implemented immediately.

58. The various regions should cooperate regarding training programs and the development of manuals and other instructional aids for courtworkers. Each region should, however, be encouraged to develop programs that are intended to meet the unique needs of those regions.

Work on this recommendation should commence immediately. These programs and manuals should be continually revised.

59. Court worker training at various levels should be developed. Court workers should be encouraged to participate in as much training as possible, and should be given opportunities to develop professional relationships with their peers.

Work on this recommendation should commence immediately. These programs should be continually revised.

60. The Minister should attempt to ensure that men, women and aboriginal people are represented on the Legal Services Board and on the Appeals Committee at all times.

This recommendation should be implemented immediately by the Legal Services Board asking the Minister to apply this process to all further appointments.

61. The Legal Services Board should request the Minister to provide honoraria to board members for their preparation time, travel time, and committee work as well as the time actually spent attending Legal Services Board meetings. The request should also be for increases in the current level of honoraria.

The Legal Services Board should commence work on this recommendation immediately and it should be in place within one year of the date of this report.

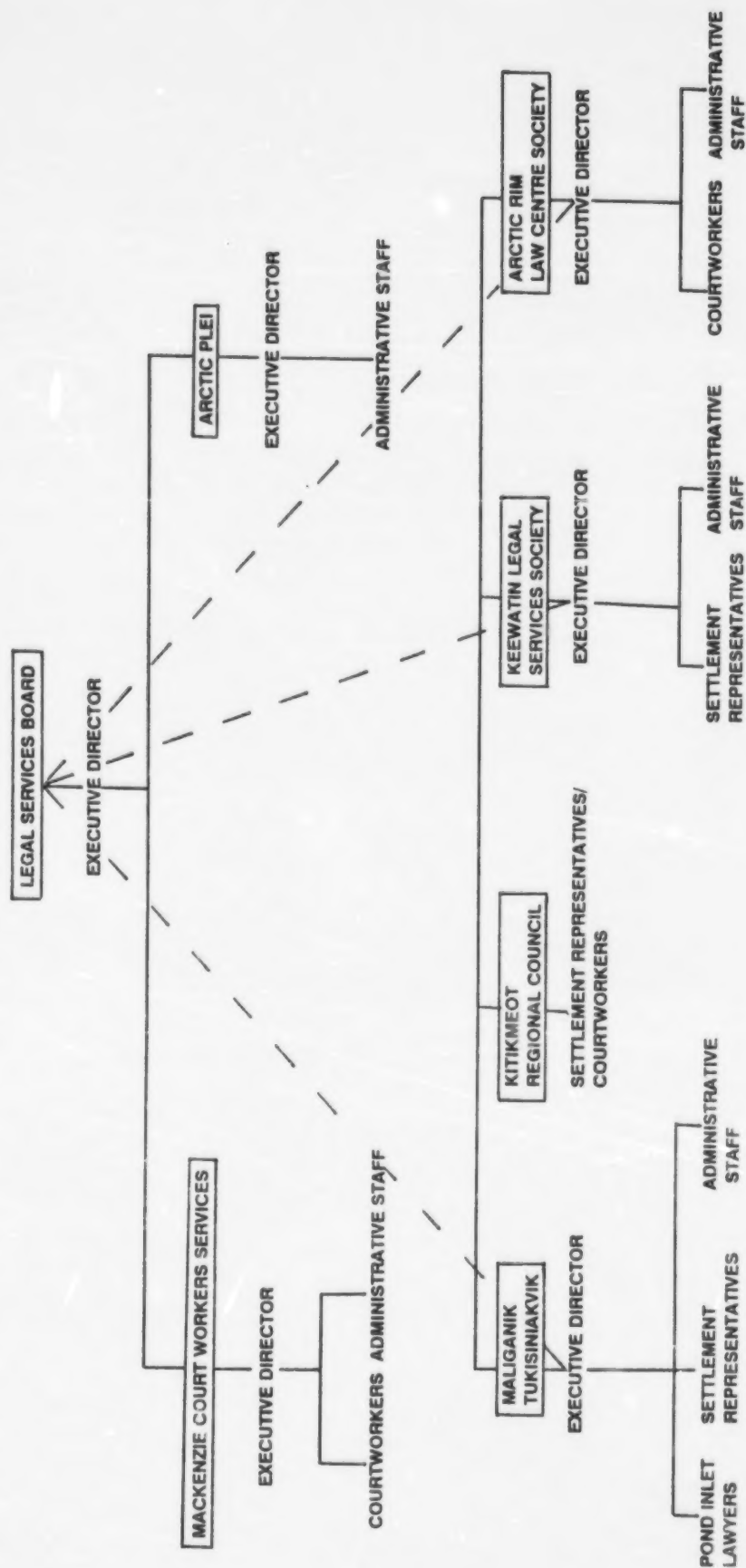
62. The Legal Services Board should request that the Minister seek the necessary changes to the federal/territorial cost-sharing agreements (legal aid, native courtworkers, public legal education and information) to support the implementation of these recommendations.

The Legal Services Board should make this request immediately and should follow up until the changes have been made.

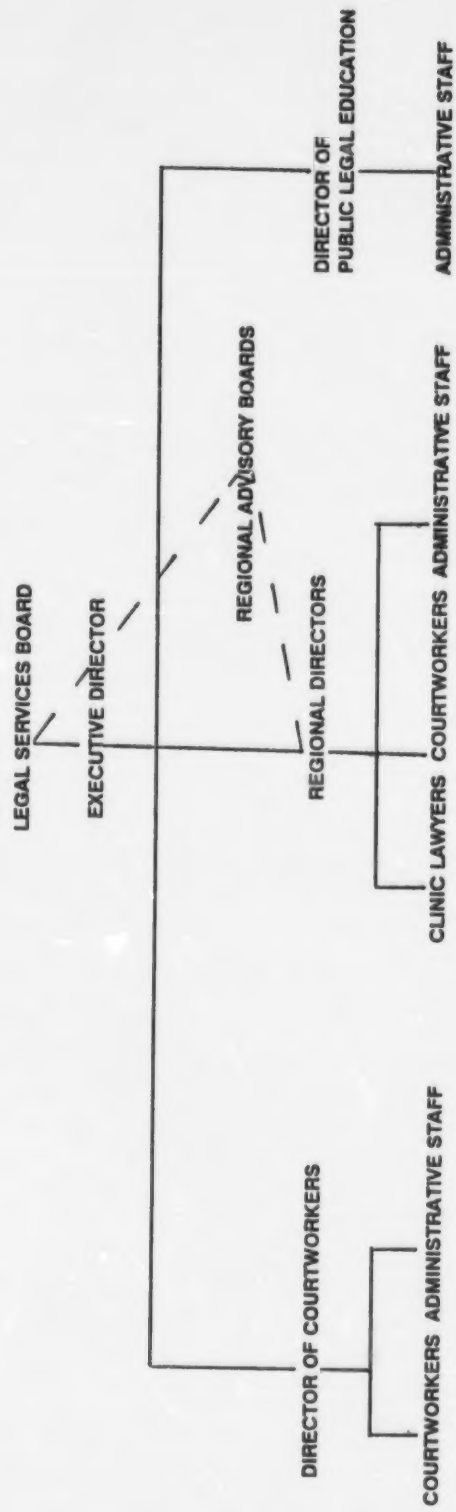
63. The management committee should have the primary responsibility for ensuring that the recommendations in this report which are accepted by the Legal Services Board are carried out.
64. The Legal Services Board should recommend to the Minister that the Legal Services Act be changed so that the Legal Services Act and Legal Services Board are renamed the "Legal Aid Act" and the "Legal Aid Board".
65. This report and recommendations should be provided to the Minister of Justice, and should be released to the public.



ORGANIZATIONAL CHART OF THE PRESENT LEGAL SERVICES BOARD AND REGIONAL COMMITTEES



PROPOSED ORGANIZATIONAL CHART OF
THE LEGAL SERVICES BOARD AND REGIONAL COMMITTEES



SCHEDULE 'A'
DATES OF LEGAL AID
TASK FORCE MEETINGS AND INTERVIEWS

	DATE	LOCATION	TASK FORCE MEMBER(S) INVOLVED
1.	July 18, 1990	Yellowknife	Wright/Sharkey/ Sanders/Kutluk
2.	October 5, 1990	Yellowknife	Wright/Sharkey/Sanders
3.	October 11, 1990	Yellowknife	Wright/Sharkey/Sanders
4.	December 3, 1990	Toronto	Sanders
5.	January 17, 1991	Yellowknife	Wright/Sharkey/Sanders
6.	February 12, 1991	Yellowknife	Wright/Sharkey/ Sanders/Kutluk
7.	February 15, 1991	Yellowknife	Wright/Sharkey/ Sanders/Kutluk
8.	March 8, 1991	Yellowknife	Wright/Sanders
9.	March 20 & 21, 1991	Yellowknife	Wright/Sharkey/Sanders
10.	April 15, 1991	Yellowknife	Wright/Sanders
11.	May 31, 1991 to June 3, 1991	Iqaluit	Wright/Sharkey/Sanders
12.	June 6 & 7, 1991	Yellowknife	Wright/Sharkey/Sanders
13.	June 10, 1991	Inuvik	Sanders
14.	June 10, 1991	Yellowknife	Wright/Sharkey/Kutluk/
15.	June 11, 12, 13 & 14, 1991	Yellowknife	Wright/Sharkey/Sanders
16.	June 18, 1991	Yellowknife	Wright/Sharkey/Sanders/ Kutluk/Hudson-MacDonald
17.	June 19, 1991	Rae-Edzo	Wright/Sharkey/Kutluk
18.	June 21, 1991	Yellowknife	Wright/Sanders
19.	July 4, 1991	Yellowknife	Wright/Sanders
20.	July 18, 1991	Yellowknife	Wright/Sanders

	DATE	LOCATION	TASK FORCE MEMBER(S) INVOLVED
21.	July 22, 23 & 24, 1991	Yellowknife	Wright/Sharkey/Sanders
22.	September 12 & 13, 1991	Yellowknife	Wright/Sharkey/Sanders
23.	October 3 & 4, 1991	Yellowknife	Wright/Sanders
24.	October 8, 1991	Yellowknife	Wright/Sanders/Kutluk
25.	October 8, 1991	Yellowknife	Wright/Sanders/Kutluk/ Hudson-MacDonald
26.	October 9, 10 & 11, 1991	Yellowknife	Wright/Sanders/Kutluk/ Hudson-MacDonald
27.	October 18 & 19, 1991	Yellowknife	Wright/Sanders
28.	October 21 & 22, 1991	Yellowknife	Wright/Sharkey/Sanders Hudson-MacDonald and Legal Services Board
29.	October 23, 1991	Yellowknife	Wright/Sharkey/Sanders/ Hudson-MacDonald

Schedule "B"
Legal Aid Task Force Interviews

Iqaluit

Adrian Wright, Neil Sharkey and Nora Sanders with:

1. Hilary da Silva, principal, Nanook School, Apex;
2. Jim Bell, Nunatsiaq News, Iqaluit;
3. Maliganik Tukisiniakvik board members:
 - (a) Geetaloo Kakkie
 - (b) Markusie Peter
 - (c) Elijah Pitseolak
 - (d) Josie Papatsie
 - (e) Malaya Papatsie
 - (f) Akeeshoo Joamie
 - (g) Mary Peter
 - (h) Anawak Arnaguq
4. Saali Peter;
5. Lazarus Arreak, former courtworker, Iqaluit;
6. Joanassie Salamonie;
7. Andy Theriault, Regional Director, Department of Indian Affairs and Northern Development, Government of Canada;
8. Fred Coman, businessman, Iqaluit;
9. Desmond Brice-Bennett, lawyer, Pond Inlet;
10. Angela Davies, courtworker supervisor, Maliganik Tukisiniakvik;
11. Suzanne Monteith, CBC Radio;
12. Susan Sammons, Arctic College;
13. Eeyoo Peter;
14. Annie Petaloosie;

Neil Sharkey and Nora Sanders with:

1. Geela Giroux, social worker, Pangnirtung;

Adrian Wright and Neil Sharkey with:

1. Bill Sackett, CBC News, Iqaluit;

Adrian Wright and Nora Sanders

1. Bill Chisholm
2. J.R. Kruger, R.C.M.P.

Yellowknife

Adrian Wright, Neil Sharkey and Nora Sanders with:

1. Doug Miller, Executive Director, Legal Services Board;
2. Geoff Bickert, Q.C., Deputy Minister of Justice; Government of the Northwest Territories
3. Katherine Peterson, Q.C., private lawyer, Canadian Bar Association, Northwest Territories Branch, Family Law Subsection;
4. Lucy Austin, Canadian Bar Association, Northwest Territories Branch, Family Law Subsection;
5. Louise Dundas - Matthews, Director of Finance, Department of Justice, Government of the Northwest Territories;
6. Pearl Benyk, Executive Director, Arctic Public Legal Education and Information Society;
7. Don Auger, Executive Director, Nishawbe-Aski Legal Services Corp.;
8. John Bayly, Q.C., private lawyer;
9. Robert A. Kasting, Director of Legal Division, Department of Justice and Member of the Government of the Northwest Territories Program Review

Adrian Wright, Neil Sharkey and Thomas Kutluk with:

1. Keera Kieken;

Adrian Wright, Nora Sanders, Thomas Kutluk and Helen Hudson-MacDonald with:

1. Sue Heron - Herbert;

Adrian Wright and Nora Sanders with:

1. Brian Watt, Superintendent of the Royal Canadian Mounted Police;
2. Arlene Hache, Yellowknife Women's Centre;
3. Mildred Wilke, Yellowknife Women's Centre;
4. Hilda Camirand, MacKenzie Court Workers Services Board Chairperson;
5. Alice MacKenzie, courtworker (Yellowknife), MacKenzie Court Workers Services;
6. Evelyn Cook, courtworker (Yellowknife), MacKenzie Court Workers Services;
7. Gordon MacKenzie, courtworker (Fort Franklin), MacKenzie Court Workers Services;
8. John Vertes, Q.C., private lawyer, Chair of the LSB;
9. Helen Tologanak, courtworker, Cambridge Bay;

10. Don Antoine, courtworker (Fort Simpson), MacKenzie Court Workers Services;
11. Rita Coates, courtworker (Hay River), MacKenzie Court Workers Services;
12. Lidwina Porter, courtworker, Gjoa Haven;
13. Kovaluk Tataluk, courtworker, Spence Bay;
14. Lucy Ayalik, courtworker, Coppermine;
15. Jean-Luc Thibault, representative of Federation Franco-Tenoise.

Adrian Wright and Neil Sharkey with:

1. Alan Regel, private lawyer;
2. Thomas Boyd, private lawyer;
3. Virginia Schuler, private lawyer, member of the LSB;
4. Don Avison, Regional Director of Justice, Canada (crown attorney);

Rae-Edzo

Adrian Wright, Neil Sharkey and Thomas Kutluk with;

1. Dan Marion;
2. Joe Rabesca, former Chief Rae-Edzo Dene Band;
3. Eddy Erasmus, Chief Rae-Edzo Dene Band;
4. John Louie, board member Rae-Edzo Friendship Centre;
5. John Zoe, board member Rae-Edzo Friendship Centre;
6. Delma Vallillee, supervisor, Rae-Edzo "Safe House";
7. Bertha Rabesca, Executive Director, Rae-Edzo Friendship Centre;
8. Curtis Grosco, Justice-of-the-Peace, Rae-Edzo;
9. Joyce Rabesca, Justice-of-the-Peace/Band Manager, Rae-Edzo;
10. Joe Migwi, former Chief, Rae-Edzo Dene Band;

Inuvik

Nora Sanders with:

1. His Honour Judge Brian Bruser, Territorial Court of the Northwest Territories;
2. Reggie Wiedemann, courtworker, MacKenzie Court Workers Services;
3. Beverly Charlie, courtworker, MacKenzie Court Worker s Services;

Toronto

Nora Sanders with:

1. Bob Holden, Executive Director of the Ontario Legal Aid Plan.

SCHEDULE "C"
SUBMISSIONS

1. Douglas Miller, Executive Director, Legal Services Board of the Northwest Territories, 14 March 1991.
2. Heidi Breier, Executive Director, Arctic Rim Law Centre Society, 10 May 1991.
3. Nancy Brown Medwid, Executive Director, The Legal Aid Society of Albert, 17 May 1991.
4. His Honour Judge Joe Bovard, Provincial Court of Ontario (Criminal Division), 2 July 1991.
5. Alan R. Regel, Cooper, Hardy and Regel, 2 July 1991.

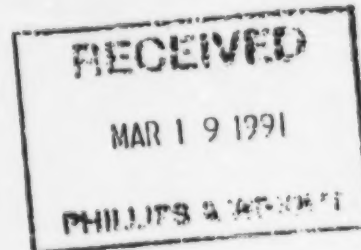
Northwest Territories Legal Aid
Legal Services Board of the N.W.T.

P.O. Box 1320 Yellowknife, N.W.T. X1A 2L9

(403) 873-7450

March 14, 1991

Legal Services Board
Task Force on Legal Aid
c/o Phillips & Wright
P.O. Box 1855
Yellowknife, NWT
X1A 2P4



Attention: Adrian C. Wright

Re: Legal Aid Task Force

Dear Mr. Wright:

Your letter of February 22, 1991 requesting information about our program has been received by me. I trust you will find the following information satisfactory:

1. List of Panel Members enclosed.
2. There are two panels now. The Non Resident Panel no longer exists. However, priority on Legal Aid assignments is given to resident members. Currently, there are no Non Resident Panel members.

Members of the Criminal Panel are assigned to circuits on a rotational basis as fairly as possible. Where counsel are located in a community, they are given the priority on Legal Aid work in their community and the surrounding area.

Clinic lawyers are not members of the panel but are contracted by the Legal Services Board to provide legal services in their respective regions. As for the Civil Panel, Legal Aid assignments are made on the same basis as circuit assignments.

As well, persons who are charged with offenses where the prescribed penalty is life imprisonment and who are eligible for Legal Aid may choose their own resident lawyer to represent them. Exceptions to this are the trafficking offenses under the Narcotic Control Act and the break and entry into a dwelling offense under the Criminal Code.

Find enclosed the circuit list for 1990-91.

3. See Number 1 for year of call to bar of each Panel Member.
4. Not available.
5. See Section 21(2) of the Legal Services Act.
See Schedule C of the Legal Services Regulations.
6. See Section 28 of the Legal Services Act.
Sections 34, 42, 43, 44, & Schedule C of the Legal Services Regulations.
7. See Section 24 of the Legal Services Act. The Board's policy is to provide legal services for advice to eligible persons charged with summary conviction offenses as to their pleas and to provide continued legal services in such cases where a trial is scheduled.
8. Section 25 of the Legal Services Act provides for Legal Aid assistance in all types of civil cases except for those described in Section 25(3). See Section 19(2) of the Regulations to see where Legal Aid shall be refused, and Sections 19(3) & (4) where it may be refused.

Note that there is requirement under Section 25(1) of the Act which indicates that Legal Aid shall not be authorized unless a lawyer has supplied a written opinion stating it is reasonable in the circumstances for proceedings to be commenced, defended or continued.

Section 25(2) of the Act indicates that Subsection (1) does not apply where the circumstances of the case necessitate an immediate authorization.

9. See number 8.
10. Our office has a policy of approving Legal Aid in civil matters for three hours maximum at the outset to have an opinion prepared. Thereafter, depending on the case, we usually approve Legal Aid for 10 hours or to some other conclusion in the case, whichever is sooner, after which, if the case is to continue, a further opinion is requested.

Scrutiny of the case depends on counsel providing us with their opinions. As well, it depends on counsel providing us with an opinion when requested and before any further work is authorized. Failure to do so may result in our office refusing to pay for any additional hours work which have been performed without prior authorization.

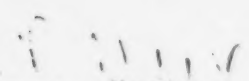
Cases are also monitored when interim accounts are submitted, when we receive complaints from clients about the lack of progress of or other problems with their cases, or when a request is made for an authorization of expenditures.

11. No difference in coverage exists between circuit work and for an individual client except that individual clients are usually approved for Legal Aid prior to the services being provided while circuit services are often approved retroactively.
12. See Sections 37, 38, 39, 40, and 41 of the Legal Services Regulations. In addition, counsel are advised that we will process the account at the reduced amount in order to avoid possible a delay in its payment and are prepared to discuss the reduction with them to determine whether an adjustment is appropriate.
13. See Section 39 of the Legal Services Regulations.
14. Our experience has been that most questions of taxations are resolved informally upon substantiation by counsel that the amount of time being claimed in the account was necessary and used. In my experience, there has been only one appeal of a taxation to the Board of Directors of the Legal Services Board.
15. Yes, find enclosed a copy of our Notice of Denial of Legal Aid. As well, letters to clients who are denied Legal Aid in civil matters and appeals are provided with the reasons why it is being denied and are advised that they may appeal the denial to the Board of Directors.
16. See Section 33 of the Legal Services Act. All materials including the application, any correspondence and opinion letters concerning a denial are presented to the Board for its consideration in determining whether to approve Legal Aid. In serious cases where an opinion has been rendered and the decision to deny Legal Aid is based on that opinion, consideration is given to obtaining a second opinion rather than proceeding with the appeal. If the second opinion confirms the first, Legal Aid will be denied. If the second opinion indicates that the action has merit, Legal Aid will be approved.
17. Find enclosed.
18. Not available.

19. The determination as to whether an expert report is necessary is made on a case by case basis usually on the opinion of counsel subject to appeal to the Board.
20. Witness fees and costs paid in criminal matters are the responsibility of the Courts. In civil matters, Legal Aid will cover travel and accommodation costs in accordance with prescribed G.N.W.T. guidelines. Witness fees are subject to negotiation with that person. No fees are paid to non experts.

If you have any questions, please contact me.

Yours very truly,


Douglas Miller, B.A., LL.B.
Executive Director

DM/sah

Encl.

COOPER, HARDY & REGEL

BARRISTERS & SOLICITORS

- 77 -

DONALD M. COOPER Q.C. (ALSO ONT.)
RICHARD I. HARDY
ALAN R. REGEL
RICHARD J. PEACH (ALSO SASK.)
GEOFFREY P. WIEST (ALSO SASK.)
EDWARD W. GULLBERG
SUSAN T. COOPER
SHEILA M. MacPHERSON
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OUR FILE:

July 2, 1991

Phillips and Wright
Barristers and Solicitors
Box 1255
W.H. Bromley Building
Yellowknife, N.W.T.
X1A 2N9

Attention: Adrian C. Wright

Dear Sir:

Re: Legal Aid Task Force

This is further to our June 10, 1991, telephone discussion wherein we discussed the Legal Aid Task Force. We enclose a letter from John Bayly which we trust is self-explanatory. My own view is that there are some communities which would be better served if there were Legal Aid offices in the community fulfilling the role of defence counsel and educator. On the other hand, in communities where there are currently counsel resident, or communities where it is relatively easy to gain access to counsel, there may be less gained by establishing a separate Legal Aid office.

I strongly believe that the Maliganik settlement rep system appears to work very well. The settlement reps all appear to be very knowledgeable with respect to the community and to the legal process. The greatest improvement to the current system might be to devote greater resources to placing court workers in each of the communities and ensuring they are properly trained than to try to place lawyers in each community.

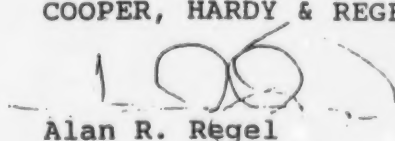
Finally, on the issue of block fees or ceilings on fees, I am strongly opposed to this. Naturally, one of the incentives to quality service is ensuring that the providers of the service are well paid for the time they spend. I am concerned that if there is a block fee system or a ceiling on the number of hours that might be devoted to a given matter, counsel might have less incentive to do the work that is required. The danger is that there could be shoddy and poor quality work.

If something should be done to conduct a full answer and defence to a charge on a legal aid file, then the Legal Aid system should ensure that the lawyer may take the steps, and ensure the lawyer performing the service is adequately paid for his services. Perceived abuses of the current system should be dealt with on a case by case basis as they have been to this point.

We trust this is satisfactory, and remain,

Yours very truly,

COOPER, HARDY & REGEL



Alan R. Regel

ARR:cv

cc. John Bayly

P.S. Further to our recent meeting, we also enclose a copy of an Ontario Legal Aid Bulletin which we trust you will find of interest.

We also confirm that we support the concept of Regional panels in principle.

LEGAL AID BULLETIN



LEGAL AID BULLETIN IS SENT TO MEMBERS OF THE LAW SOCIETY OF UPPER CANADA BY THE ONTARIO LEGAL AID PLAN

NUMBER 67

SUITE 200, 401 UNIVERSITY AVENUE, TORONTO, M5G 2G1, (416) 979-1446

JUNE 1991

TARIFF MESSAGE

The Plan is pleased to have heard from Attorney General Howard Hampton that there will be a tariff increase this year. Negotiations are continuing between the Government and the Plan on the details of its implementation.

We hope to be able to announce details of the increase within the next month.

Tom Bastedo, Chair
Legal Aid Committee

LAWYERS' OVERHEAD COSTS \$60/HOUR SURVEY SHOWS

To enable the Sub-Committee reviewing the civil tariff to make more informed recommendations, the Plan hired Price Waterhouse in late 1990 to conduct a survey of lawyers' overhead costs. The survey was restricted to those who had billed the Plan recently for work performed under a legal aid certificate.

The median total cost per hour for the survey database, covering lawyers from across Ontario, was \$59.94. For those practising criminal law, the median was \$58.53 per hour. For family law it was \$65.52 and for non-family civil litigation it was \$64.67.

When regional breakdowns were examined, they showed a median hourly overhead cost of \$87.96 for the Northern Ontario lawyers who responded. Lawyers from across the province, but excluding Metro Toronto, showed a median hourly cost of \$63.41, while Metro Toronto lawyers indicated an hourly overhead of \$55.10.

Price Waterhouse included in hourly costs not only cash expenses but also non-cash expenses such as amortization and depreciation, but the latter did not have a significant effect on the cost profiles.

DEMAND INCREASES FOR LEGAL AID

The Plan recorded a 17.2% increase in demand for service through its Area Offices during the fiscal year ended March 31, 1991. In the year, 384,282 people received summary legal advice, were referred to another agency or made an application for legal aid. That figure compares with 327,791 during the previous year.

The number of people applying for legal aid rose 21% during the year, from 164,503 to 198,934.

A total of 166,114 legal aid certificates were issued - up 25.4% from the 132,439 approved last year.

Duty Counsel, both salaried and fee-for-service, recorded an increase of 7% in the number of people assisted in the province's criminal, family and youth courts. During the fiscal year, 341,077 individuals were helped compared with 318,718 last year. In addition, telephone advice was provided to 15,892 people.

APPLICANT JAILED FOR 42 MONTHS

A legal aid applicant who threatened Area Director Peter MacDonald with death and who lied on three legal aid applications by concealing ownership of property worth about \$130,000, has been sentenced to 42 months in penitentiary.

John Bricker, 62, of Port Elgin, received 2 years on the threatening charge and 18 months on the three perjury charges. His case was heard before Mr. Justice J. Ian McKay with a jury in Walkerton.

The court noted that Bricker, who has an extensive criminal record dating to 1979, had been convicted previously of a number of threatening offences.

On three separate occasions in 1986, 1987 and 1988 he applied for legal aid, and concealed his ownership of property. When his ownership came to light, he was refused any further assistance through the Plan and subsequently telephoned Mr. MacDonald at his home, saying, in part, "I'm going to knock you off." Crown Attorney Brian Farmer said tapes of the conversation showed it to be crude, vulgar and vicious.

COMMITTEE APPOINTMENTS

Toronto criminal lawyer and Chair of the CBAO criminal justice section Michelle Fuerst has been appointed a non-Bench member of the Legal Aid Committee as has Osgoode Hall Law School student Lea Weir.

JACQUI GREATBATCH, LL.M.

The plan records with sadness the death on May 13 of Jacqui Greatbatch, 35, of breast cancer. Jacqui was a major force in the legal clinic movement. Her husband, Marcus Pratt, of the Legal Aid Research Facility, cared for her tirelessly during her illness.

PAYMENT OF ACCOUNTS

During April, the Legal Accounts Department processed 2,921 final accounts. Of that number, 99.4% were paid within 60 days.

Of criminal standard form accounts, 98.5% were paid within 30 days, while 98.7% of civil standard form accounts were paid within the same period.

Of non-standard form accounts requiring examination and settlement, 99.1% of the criminal accounts were paid within 60 days and 98% of civil accounts were paid within the same time frame.

July 2, 1991

Joe Bovard
Court House
1911 Eglinton Ave. East
Scarborough, Ont.
M1K 2M3

Adrian C. Wright
Chair
Legal Services Board Task Force
P.O. Box 1855
Yellowknife, N.W.T.
M1K 2M3

RE: THE DELIVERY OF LEGAL AID SERVICES IN THE NORTH

Dear Adrian,

Thank you for your letter dated April 26, 1991 regarding the above captioned matter. I am sorry that I did not respond sooner but I have been away for the better part of two months and have just recently settled down to the regular routine in Toronto. I will attempt to answer your questions in the order in which you posed them in your letter.

Before beginning to give you my opinions I would like to emphasize that before any action is taken in a community or region it is imperative that there be extensive community consultation. The purpose of this is to ensure that the people being served have a say in the type of system that is eventually put in place to serve them. The same system may not be appropriate for all communities or regions. If one does not consult before hand then whatever action is taken will be suspect and possibly resented by the community. This will be inimical to the proper functioning of the legal aid service.

1. What delivery model (or combination of delivery models) is best suited to the provision of legal aid services in the North?

First of all, it should not be assumed that the same delivery system will suit all communities or regions. A process of consultation and study will point the way to what type of system is best suited for particular regions.

Having said that, I think that it is fair to say that there are general models that lend themselves to the delivery of legal services to remote regions populated by mainly native people.

(a) The clinic staff lawyer model where lawyers hired by the clinic's board and the NWT perform all necessary services for a salary only/or for a salary plus, a limited number of private retainers. These lawyers hire local native persons to assist in the administration of the office and to perform as paralegals. In this model there is very little work done by the private bar. They are only called upon to help in cases of conflicts or other emergency situations. This has been termed a "Legal Services Corporation". In this model there is an all native Board of Directors who works in conjunction with the Legal Services Board of the NWT and the staff lawyers.

(b) The clinic staff lawyer model where the core legal services (case work) is done by a combination of the staff lawyers and a specially trained corps of members of the private bar who have shown not only interest in the provision of legal services to the areas residents, but who have shown themselves to be sympathetic to the improvement of the administration of justice in the region. As in (a) above, in this model there is an all native Board of Directors who works in conjunction with the Legal Services Board of the NWT and the staff lawyers. Maliganik Tukisiniakvik has evolved from the model described in (a) above to this type of service.

Although there are other permutations of these models which can be posited, I think that in the NWT some variation of these two would probably be the best. The results of community consultation, the particular problems of the region, the budget available and the availability of personnel, are some of the factors which would assist in determining the specifics of the final product.

2. What should the role of court workers be...:

The role of the court worker is the heart of the delivery system. The reason is that they are the link between the community and the clinic. This is especially so when the lawyers that do the case work and perform the other functions of the clinic are non-native. The court worker must be involved in every aspect of the clinics work. He or she must be seen to be significantly involved with the clinics work in all areas in order to give the clinic credibility as an indigenous operation. This means they should do as much case work as they can competently handle and the Law Society permit, as well as be involved in community education and administration of the office.

Among some of the most important qualifications the court worker must have are:

- be from the community which is served by the clinic;
- be respected by the community and the court personnel (police, Crown Judge etc.);
- have good cultural credentials (fluency in the language of the area for example);
- have a good command of English and be able to express him/herself well in writing and orally;

...what can be done to:

(a) recruit suitable individuals to act as court workers;

- a complete job description must be written and distributed to all of the major native organizations in the region/community and applications should be invited by the board of the clinic.

(b) train new court workers:

- using the job description as a guide, a detailed training course should be devised that would be a combination of class training and on the job experience. I prefer that the staff lawyers themselves devise the program and carry out the training. The reason is that in this way the program will be relevant to the region's/community's particular problems. Also, it easier to train persons if you are going to be working with them on an ongoing basis. They develop confidence in you and you develop confidence in them and both get to know each other. An additional advantage is that both will find it much easier to work with the other because they will be training, learning and working in conjunction.

When I first went to Iqaluit I sent a court worker to a court worker training seminar far away from our region. When she returned I found that 90% of what she had learned was of no use in our particular region. From then on I trained all of my court workers myself and they learned exactly what they had to know in order to do what the clinic in the Baffin needed them to do.

This not to say that "outside resource persons" should never be called upon to assist. However, they have to be very carefully chosen for their abilities in training native court workers and for their expertise and knowledge of the particular problems being faced by the court workers in general and in that area in particular. The latter qualification can be achieved by a good briefing of the resource person prior to coming. Also, all resource persons should be told exactly what it is that they are expected to teach and why. They should also have an idea of the nature of the court workers experience and abilities before they arrive.

(c) ...provide "refresher sessions for experienced court workers:

-Refresher courses should be provided at least every six months. There should also be an open line information and training line between the court workers in the outlying communities and the "home office". Video tapes can be developed for use by the court workers in the outlying communities. For example, tapes on how to do show cause hearings or summary conviction trials and guilty pleas can be quite useful as aids to refresh and reinforce their previous learning.

(d) ...provide adequate incentives to persuade court workers to remain in their positions rather than finding alternate employment.

- pay them a respectable and comparable salary and give them a respectable and comparable benefit package;

- give them the respect that they deserve. For example, give them respectable facilities and support services (offices, telephones, fax machines, word processors etc...)

3. What should be the priority for community legal aid clinics---criminal defence work or poverty law?

- neither. Community legal education should be the priority. the reason is that case work of what ever kind is 90% a dead end street in terms of long term and fundamental change and advancement of the people of the region the clinic is serving. Concentrating on case work is like trying to repair a leaky dike by running around putting your finger in the holes as they burst forward. It exhausts all of your resources ,material as well as personal, and at the end of it all the residents of the region as a whole are not very much farther ahead than before you "took the case".

Also, consider all of the residents of the area who do not have "cases" that you can take. Concentrating on case work does little , if anything, to assist them. The population as a whole has legal needs that do not manifest themselves as case work. They may want to know more about how to start a business; what are the laws that govern the government bodies that control their lives; how to prevent getting into court rather than what to do once there etc. And you will never know these things unless you ask.

I do not mean to say that case work is not important; it is a crucial component of any legal services delivery system. But it should not be the heart of the system. A legal services clinic in a remote native region has to be more than a processing plant for "cases". The most important value of such a service is to help the residents by teaching them our foreign legal system and helping them to gain a broader understanding of what we are doing to them in the legal realm. If that is accomplished then

evolution can occur on a broader basis. If after ten years of working in a legal clinic in a remote native community all one can say is, "I did 10,000 cases but I do not think that I taught anyone much about the legal world of the Euro-Canadian", I do not think much was accomplished.

4. Having regard to fiscal restraint and the large amount of criminal defence work presently being done by clinics, what can or should be done to see that more poverty law is done by community clinics?

- One way of accomplishing this is to entrust most of the criminal defence work to a specially trained corps of members of the private bar who have shown not only interest in the provision of legal services to the areas residents, but who have shown themselves to be sympathetic to the improvement of the administration of justice in the area. This leaves the clinic lawyers freer to do poverty law.

- Another alternative is to restrict the mandate of the clinic so that it is not allowed to do criminal defence work. I think this is undesirable because it emasculates the clinic in reality and symbolically.

- Another possibility is to have one staff lawyer who does nothing but poverty law and another one that does the criminal defence work. After a time they could change roles if they like.

5. Should community clinics in the North engage in public legal education, law reform or interest group advocacy and, if so, what issues should be the primary focus and what portion of the clinic's resources should be devoted to those activities?

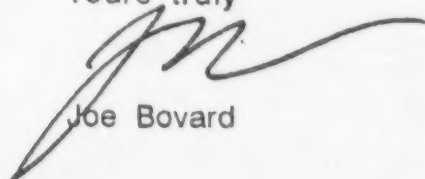
- Regarding public legal education, I refer you to my comments under number 3 above.

- Regarding "interest group advocacy and law reform", I think that as long as these activities are consistent with the goal of improving generally the situation of the residents of the area the clinic is serving, they should be done.

There are obvious situations which should be avoided however. For example, the clinic should not allow a substantial portion of its resources to be monopolized by any one cause. The reason for this is that although the one cause may be beneficial to the people of the region, the clinic would lose much of its general value to the majority of the people. Even if the one cause touched all of the lives of the residents, it is not the purpose of the clinic to be consumed by one cause. Native residents of remote areas have many legal concerns that should be the target of a legal services delivery system. If an interest group wants to obtain legal help for a particular concern then there are other ways in which it should seek help, for example, by obtaining government funding to hire legal help. To monopolize a general resource for the sake of pursuing one goal, regardless of how laudable and important, would be to deprive the community at large of a very needed and useful resource that helps them on a daily basis with the myriad of problems that beleaguer their lives. These are also important concerns. I think the choice should not be one or the other. Both should be pursued, but via different means and vehicles.

I hope that these brief comments are of use to you. I thank you for giving me the opportunity to comment on a topic for which I feel so much passion. It felt good just to think and write about it. All of what I have said assumes many things that are not spelled out specifically. I would have to write a book in order to elaborate all of my presuppositions. Also, there is much more that could be said about all of the questions that you pose. I would welcome the chance to be of more assistance if you think that I can assist your further. Good luck in your endeavours. It is certainly a worthy cause and I commend all of you for pursuing it with such vigor.

Yours truly



Joe Bovard



THE LEGAL AID SOCIETY OF ALBERTA

Provincial Office

- 87 -

300 Revillon Building, 10320 - 102 Avenue, Edmonton, Alberta T5J 4A1
Telephone 427-7560 Fax 427-5909

RECEIVED

MAY 22 1991

MAIL ROOM & OFFICE

May 17, 1991

Legal Services Board
Task Force on Legal Aid
P.O. Box 1855
Yellowknife, N.W.T.
X1A 2P4

Attention: Adrian C. Wright

Dear Mr. Wright:

RE: Legal Services Board Task Force

In the Province of Alberta, all recipients of Legal Aid services, except Young Offenders, are responsible for expenditures incurred on their behalf, and as part of the application process, must sign an undertaking to repay the Society. Applicants may be asked to provide a downpayment, sign Assignments of Bail or Costs or provide a Chattel Mortgage or Land Mortgage. If these conditions are not met the coverage may be suspended or cancelled. Reliance is also placed on lawyers by means of terms on the Legal Aid certificate. For example, the lawyer is responsible to obtain the necessary security (i.e. bail) but fails to, the Society may decline to pay him the amount which the Society would have received by virtue of the Assignment.

Clients who are able to, or required to, repay the Society as a condition of coverage are sent monthly statements and a Recoveries Department follows up on late payers and others who are not making regular remittances. Some categories of clients are excluded from the recoveries process, for example, those on welfare, long serving prisoners, elderly persons on small fixed incomes. The collection of funds is a sensitive area and the Recoveries staff does not employ any of the more extreme collection methods. We do occasionally appear in Small Claims Court when it is found economic to do so.

Approximately 60% of recoveries comes from persons making regular payments. The next largest is from Bail Assignments (approximately 40% of criminal receipts). Other chattels, assignments of costs and other legal methods provide the balance of the funds.

If you would like more detail on any collection area or method employed do not hesitate to contact our Director of Administration and Finance, Larry McCutcheon at the same address and phone number as shown above.

Yours truly,

N Brown Medwid

Nancy Brown Medwid
Executive Director

NBM/pb

c: Larry McCutcheon

ARCTIC RIM LAW CENTRE SOCIETY

BOX 287
TUKTOYAKTUK, N.W.T.
X0E 1C0

Office: (403) 977-2260
[REDACTED]

RECEIVED

MAY 22 1991

PHILLIPS & WRIGHT

May 10, 1991

Phillips and Wright
Barristers & Solicitors
P.O. Box 1855
Yellowknife, N.W.T.
X1A 2P4

Attention: Mr. Adrian Wright

Dear Adrian,

Re: Legal Aid Task Force

Some time ago (March 8, 1991, in fact) you asked if I could write to you regarding my experience as Executive Director of Arctic Rim Law Centre. In particular you asked if the clinic should be located in Tuktoyaktuk or in Inuvik and what the focus of the legal clinics should be in general. I now finally have a moment in which to respond.

At the outset, I wish to stress that the observations and opinions expressed here are my own. That is, this issue has not been discussed by the Board of Directors of Arctic Rim and nothing here should be taken as the position or view of Arctic Rim Law Centre.

Where the clinic "should" be located is as much a political question as anything else. From reviewing some of the history of Arctic Rim it seems that Inuvik vs. Tuk was an issue from the beginning. In many ways, it makes administrative sense to locate the clinic in Inuvik. That's where the court is headquartered for this region. Being in Inuvik would mean that the clinic lawyer would be able to access resource materials more readily; would presumably be able to respond more quickly to emergency needs (especially in family law matters); would be practicing in less professionally isolated circumstances (there are now two practicing lawyers in Inuvik) and generally ease some of the annoying little obstacles to practice that exist in Tuk (i.e. faulty telephone lines, bad fax connections. etc.).

From an economic and administrative view, Inuvik would also offer advantages. It would certainly be cheaper in most respects. For example, when I go on circuit, I have to fly down to Inuvik to meet up with the court party. Generally this means going in the night before. So there's travel and accommodations costs. There would presumably also be a larger pool of skilled workers. Finding individuals with the skills necessary for the job has been difficult in Tuk (Our low salaries may well have something to do with that though). Many costs associated with office overhead would also presumably be cheaper since the freight costs would be less.

But these superficial advantages should not dominate the issue. If the clinic were to relocate to Inuvik its mandate and purpose would have to be rethought. Its composition and budget would also have to be re-evaluated. This analysis would have to be completed before making any recommendations on changing the clinic's location.

Broadly, Arctic Rim's mandate is to provide legal services to a defined geographical area. To me, that means a lot more than an office and a skeleton staff. It means provision of direct service through competent representation by lawyers and court workers; it means public legal education; it means community development initiatives, especially in aboriginal justice issues (i.e. developing alternatives to the criminal justice system for resolving disputes). And these are only the generalities, the abstract objectives. I believe that if we are to do more than lip service to these goals and objectives the clinics must be accessible to the communities being served.

That accessibility is the most important, while being the most intangible benefit of having Arctic Rim located in Tuk rather than Inuvik. Without meaning to criticize all the efforts currently being made to "bring justice to the North", I have come to realize that it is a virtually empty justice when it is delivered by long distance with fly in courts and impersonal contact through telephone or print.

As all lawyers will know, a basic element of the solicitor/client relationship is trust. This is true no matter where one practices law. But in a small and culturally mixed community like Tuk the element of trust assumes a much larger dimension than I have experienced elsewhere. I have seen this element of trust grow in the past 14 months or so and believe that this, all by itself, is probably the most positive benefit of having the clinic located in this community rather than in Inuvik. Were I

to practice from Inuvik, I would remain just as much an "outsider" as if I travelled up from Yellowknife. I would not have developed the same kind of relationship as I now generally have with the people I serve.

You may say that this is unimportant so long as I am providing competent legal representation. I have discovered that it is trust that enables me to do that. I am not just speaking of trust in the sense of professional reputation. Much more important is that there has developed trust for me as a person. It is this aspect that would be lost if I were in Inuvik. The importance of this can't be minimized. It is because I live here, share the same daily experiences, the same frustrations and similar pleasures, that people now feel comfortable enough to speak to me about important and personal things. On a case by case basis this means, within the limits of my abilities, that I can provide real representation and advice.

This is not just a process of my own education about the culture or the particular circumstances of a particular client, although that is certainly part of it. I'm sure that in the past year or so, my approach to people is softer and more patient. Perhaps I now know how to listen to the riddles and parables that many people speak in when telling me about their case. I have learned to listen as a person "tells me a story". Being in Tuk, rather than travelling on circuit, has given me the time to learn these things. I doubt very much that I would have learned as much about the very fundamental cultural barriers and differences in world view between myself and many of my clients had I not lived in this community. And having learned these things, I can provide more effective representation in the courts.

But I would emphasize the much more important element of being less and less an "outsider" with each day I live here. In the beginning, I only got the sketchiest of details from clients; I learned very little about their motivations, family, social or familial connections and rivalries. People were reticent about speaking with me and suspicious of my role. I noticed, both here in Tuk in my first few months and while on circuit, that many people were confused about who the defence counsel works for. People have asked me "Are you going to send me to jail?" and similar questions. It is very difficult to convince people that you speak for them when you are seen arriving in the community with the judge and the crown counsel and are dropped off at the court by a local RCMP officer.

I have also noted that my presence in Tuk has had benefits for the other communities we serve. Without having had the chance to do any promotional work on the availability of our service, I have noted a steady increase in the number of calls I get from Holman, Paulatuk and Sachs Harbour. We don't even have court workers in the latter two communities. I believe that many people again perceive the clinic and my services as being more "theirs" since I'm in Tuk.

I remember during the interviews for this position, you or Doug asked me about what was more important; building the reputation of the clinic or my own. I think I replied to the effect that I didn't believe in "the cult of personality". What I have expressed to you so far in this letter may seem to contradict that sentiment. I still, however, believe that it is most important to develop the clinic's reputation. People will come and go. But having the clinic located here will help in that process as it becomes increasingly identified as a community based rather than outside imposed organization. It must still be stressed that a lawyer practicing in a small northern community has to develop a much more personal relationship with her clients than if practicing in a larger urban centre.

With respect to the focus of legal clinics, I have many concerns about their present direction and growth. I believe that this issue deserves full study by the Legal Services Board. The clinics seem to lack cohesive goals or objectives and I believe that now that there are four clinics operational, (plus Mackenzie Court Workers and Arctic PLEI) it would be a good time to try and develop some consistency as to the types, levels and quality of services being offered across the Territories. This should be conducted in conjunction with a thorough examination of the funding currently provided and potential alternative sources of funding. Arctic Rim is severely under funded. At our current level of funding we can do little more than lip service to our mandate. Additionally, we are hampered with respect to the amount of community development and public legal education we are able to do because of the restrictions imposed by the cost sharing arrangement with the Federal Government.

Ideally, I believe there should be more emphasis placed on civil and administrative areas of law. The present reality is that we act primarily as defence counsel in criminal matters and then try to pick up civil (mostly family law cases) and administrative cases that seem most urgent. It is my view that it is in the latter two areas that the true need for legal advice, information and representation exists. Most people lack what I would

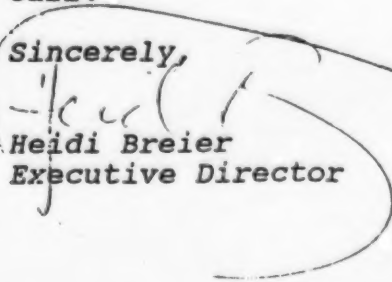
consider basic knowledge about their rights and responsibilities as, for example, tenants, welfare recipients, common law spouses, debtors or creditors. To provide information and representation in these areas of law will of course mean a need for additional funding so that more staff can be engaged. I envision a clinic in Tuk that has at least two full time lawyers and two or three court workers who are properly trained paralegals.

There must be more emphasis placed on the training of paralegals. It is these people who can have the greatest impact in the communities if they are properly trained and supported by the clinics.

But even without altering our present focus, the Territorial Government must decide if it truly supports the provision of legal services in the communities. If so, we have to be adequately funded. We have to have the staffing, library resources, office equipment, and operational funding to actually provide that service.

I trust that you will find the foregoing comments and opinions useful to you and to the Legal Aid Task Force as part of its investigation of the provision of legal services in the Territories. I would appreciate being kept informed of the progress you are making, and of any recommendations you make to the GNWT. If you have further questions please don't hesitate to call.

Sincerely,


Heidi Breier
Executive Director

SCHEDULE "D"
TIME SCHEDULE FOR IMPLEMENTATION
OF RECOMMENDATIONS

Recommendations to be Implemented Immediately

Recommendation # 1, 2, 4, 5, 6, 10, 11, 12, 13, 16, 17, 25, 27, 30, 31, 44, 50, 52, 54,
58, 59, 60, 65

Work to commence immediately so that
recommendations are implemented within one year

Recommendation #24, 33, 34, 38, 39, 40, 41, 43, 46, 51, 53, 56, 61

Recommendations to be implemented within six Months

Recommendation #14, 23

Recommendations to be implemented within one year

Recommendation #18, 36, 37

Recommendations to be implemented within two years

Recommendation #20, 49

Recommendations to be implemented with one to three years

Recommendation #42, 45

Work to commence immediately so that
recommendations are implemented within two years

Recommendation #21, 22, 26, 28, 29

**Work to commence immediately so that
recommendations are implemented within three years**

Recommendation # 7, 8, 19

**Implement within one year or after
recommendation #1 and #2 have been completed**

Recommendation # 3

**Work to commence once administration changes
are put into effect and completed within two years**

Recommendation #32

**Requests for statutory amendments to be made immediately,
with regular follow up until they are introduced and enacted**

All requests for amendments should be made immediately to the Minister of Justice and the Legal Services Board should regularly follow up to ensure that the amendments come into effect

Recommendation # 9, 15, 35, 64

ACKNOWLEDGEMENTS

The Task Force acknowledges and thanks all those who spoke to us, met with us and provided us with information.

We also acknowledge the financial assistance and support provided by

The Legal Services Board of the Northwest Territories
The Law Foundation of the Northwest Territories
Government of the Northwest Territories, Department of Justice.

We further wish to acknowledge the assistance which we received from all of the written resources listed in the Bibliography. We wish to particularly note the Canadian Bar Association Report on Delivery Models which we found to be invaluable and upon which we drew liberally in preparing this report.

Finally, we wish to thank Kim Jamieson for her patience and tireless effort in typing the innumerable drafts and revisions which were necessary to complete this report.

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